Supreme Court, U. S.
FILED
MAY 24 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Volume 2.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

TABLE OF CONTENTS OF APPENDIX.

Vol. 1
Page

Relevant Docket Entries in the United States District Court for the District of New Jersey A1
Relevant Docket Entries in the United States Court of Appeals for the Third Circuit A7
Complaint A10
Answer and Counterclaim A29
Excerpts From Testimony:
Daniel Parke Lieblich–
Direct Examination A56
Voir Dire Examination A81
Direct Examination (Continued) A87
Voir Dire Examination A101
Direct Examination (Continued) A103
Voir Dire Examination A116
Direct Examination (Continued) A121
Voir Dire Examination A272
Direct Examination (Continued) A274
Voir Dire Examination A337
Direct Examination (Continued) A341

Vol. 2
Page

Cross-Examination A405
Re-Direct Examination A473
C. Vitolo (Deposition) A475
Direct Examination A475
Cross-Examination A483
William Edmund Kenney–
Direct Examination A490
Cross-Examination A516
Milton Mendelson–
Direct Examination A538
Cross-Examination A578
Re-Direct Examination A593
Re-Cross-Examination A604

	Vol. 2 Page
Re-Direct Examination	A605
Re-Cross-Examination	A607
Re-Direct Examination	A609
Re-Cross-Examination	A610
Re-Direct Examination	A611
Benjamin E. Bensinger (Deposition)	A612
Direct Examination	A612
Rex Martin Golobic–	
Direct Examination	A652
Cross-Examination	A681
John L. Hanigan (Deposition)	A684
Direct Examination	A684
Ruben A. Dankoff–	
Direct Examination	A715
Voir Dire Examination	A755
Direct Examination (Continued)	A757
Cross-Examination	A760
Re-Direct Examination	A768
Re-Cross-Examination	A782
John L. Hanigan (Deposition) (Resumed)	A784
Direct Examination (Continued)	A784
Milton Rudo (Deposition)	A795
Direct Examination	A795

	Vol. 3 Page
Richard Davis–	
Direct Examination	A805
Cross-Examination	A850
Re-Direct Examination	A863
Discussion	A865
John A. Barron–	
Direct Examination	A871
Voir Dire Examination	A879
Direct Examination (Continued)	A881

	Vol. 3 Page
Voir Dire Examination	A882
Direct Examination (Continued)	A884
Voir Dire Examination	A886
Direct Examination (Continued)	A892
Voir Dire Examination	A893
Direct Examination (Continued)	A902
Voir Dire Examination	A903
Direct Examination (Continued)	A905
Voir Dire Examination	A906
Direct Examination (Continued)	A908
Voir Dire Examination	A912
Direct Examination (Continued)	A914
Voir Dire Examination	A914
Direct Examination (Continued)	A916
Voir Dire Examination	A916
Direct Examination (Continued)	A917
Voir Dire Examination	A926
Direct Examination (Continued)	A927
Voir Dire Examination	A933
Direct Examination (Continued)	A940
Voir Dire Examination	A949
Cross-Examination	A961
Re-Direct Examination	A1014
Re-Cross-Examination	A1018
Milton Rudo–	
Direct Examination	A1019
Cross-Examination	A1138

	Vol. 4 Page
Cross-Examination (Continued)	A1197
Bernard Rudo–	
Direct Examination	A1276
Cross-Examination	A1307
Re-Direct Examination	A1325

Vol. 4
Page

Kenneth Brooks Abernathy–
Cross-Examination A1325
Re-Cross-Examination A1327
Joseph A. Rice–
Direct Examination A1328
Cross-Examination A1332
Re-Direct Examination A1355
Discussion A1358
John L. Hanigan–
Direct Examination A1360
Cross-Examination A1376
Re-Direct Examination A1428
Re-Cross-Examination A1432
Daniel Parke Lieblich (Recalled)–
Direct Examination A1434
Cross-Examination A1446
Discussion A1449
Summation on Behalf of Defendant A1450
Charge of the Court A1451
Verdict A1543
Defendant's Motion for Directed Verdict or Verdicts at Close of Plaintiff's Case A1544
Defendant's Motion for Directed Verdict or Verdicts at Close of All of the Evidence A1545
District Court Judgment (May 23, 1973) A1546
Motion of Defendant for Judgments Notwithstanding the Verdicts and in the Alternative for a New Trial A1550
Opinion of the District Court (September 17, 1973) (Printed as Appendix B to Petition for Certiorari and Will Not Be Reprinted in the Appendix to the Briefs)
District Court Order (October 1, 1973) A1560
Defendant's Notice of Appeal (October 2, 1973) A1562
Court of Appeals Opinion (August 14, 1974) A1563
Court of Appeals Amended Judgment (September 5, 1974) A1566
District Court Supplemental Order (September 17, 1974) A1567

TABLE OF CONTENTS OF APPENDIX (Continued).

Vol. 4
Page

Defendant's Notice of Appeal (September 26, 1974) A1571
Opinion of the District Court (November 15, 1974 as amended November 25, 1974) (Printed as Appendix C to Petition for Certiorari and Will Not Be Reprinted in the Appendix to the Briefs)
Defendant's Notice of Appeal (February 7, 1975) A1572
Court of Appeals Opinion (August 29, 1975) (Printed as Appendix A to Petition for Certiorari and Will Not Be Reprinted in the Appendix to the Briefs)
Court of Appeals Judgment (August 29, 1975) A1573

Vol. 5
Page

Plaintiff's Exhibits.

Exhibit P1 ..... A1574
Exhibit P1A A1575
Exhibit P1B A1577
Exhibit P2 ..... A1584
Exhibit P3 ..... A1587
Exhibit P4 ..... A1593
Exhibit P5 ..... A1598
Exhibit P6 ..... A1599
Exhibit P7 ..... A1601
Exhibit P8 ..... A1602
Exhibit P9 ..... A1603
Exhibit P10 ..... A1604
Exhibit P11 ..... A1623
Exhibit P12 ..... A1624
Exhibit P13 ..... A1625
Exhibit P14 ..... A1626
Exhibit P15 ..... A1627
Exhibit P27 ..... A1628
Exhibit P29 ..... A1632
Exhibit P30 ..... A1652

Vol. 5
Page

Exhibit P32 ..... A1661
Exhibit P33 ..... A1662
Exhibit P34 ..... A1663
Exhibit P35 ..... A1666
Exhibit P36 ..... A1667
Exhibit P37 ..... A1668
Exhibit P38 ..... A1669
Exhibit P39 ..... A1671
Exhibit P40 ..... A1672
Exhibit P41 ..... A1673
Exhibit P42 ..... A1674
Exhibit P44 ..... A1675
Exhibit P45 ..... A1676

Vol. 6
Page

Exhibit P46 ..... A1683
Exhibit P47 ..... A1700
Exhibit P48 ..... A1717
Exhibit P49 ..... A1734
Exhibit P50 ..... A1735
Exhibit P52 ..... A1736
Exhibit P53 ..... A1737
Exhibit P58 ..... A1738
Exhibit P59 ..... A1740
Exhibit P60 ..... A1741
Exhibit P61 ..... A1742
Exhibit P62 ..... A1743
Exhibit P63 ..... A1744
Exhibit P64 ..... A1745
Exhibit P65 ..... A1765
Exhibit P66 ..... A1766
Exhibit P67 ..... A1776
Exhibit P68 ..... A1797

TABLE OF CONTENTS OF APPENDIX (Continued).

Vol. 7
Page

Exhibit P72 ..... A1799
Exhibit P73 ..... A1800
Exhibit P74 ..... A1802
Exhibit P75 ..... A1835
Exhibit P76 ..... A1836
Exhibit P77 ..... A1838
Exhibit P78 ..... A1839
Exhibit P79 ..... A1843
Exhibit P80 ..... A1847
Exhibit P81 ..... A1850
Exhibit P87 ..... A1864

Defendant's Exhibits.

Vol. 7
Page

Exhibit D1 ..... A1866
Exhibit D1A A1867
Exhibit D3 ..... A1878
Exhibit D4 ..... A1879
Exhibit D5 ..... A1880
Exhibit D7 ..... A1881
Exhibit D9 ..... A1882
Exhibit D11 ..... A1883
Exhibit D13 ..... A1884
Exhibit D16A A1885
Exhibit D20 ..... A1886
Exhibit D30 ..... A1887

[869]

CROSS-EXAMINATION.

By Mr. Seeley:

Q. Now, in 1964 was Paramus Bowl-O-Mat competing with Fair Lawn Lanes?

A. Yes.

Q. What is the nature of competition between bowling centers; what do you think of when you say "competition between bowling centers"?

[870]

A. I think of a word like tough or fearless——

Q. Aside from that, what do your bowling centers do which is competition?

A. Their very presence is competition.

Q. Why?

A. Because they are there, facilities are there.

Q. Well, what does their being there do as far as bowlers are concerned?

A. It gives a bowler a choice of centers to go to.

Q. And there are various things about a bowling center which may make them more or less attractive to bowlers, such as location and size, attractiveness?

A. Yes.

Q. Cleanliness?

A. Those are some factors, yes, very important factors.

Q. Are there any other competitive factors you can think of?

A. Yes. Parking, presence of A-2 equipment or a more modern equipment than one center has, if it's carpeted or not carpeted, if the rest rooms are properly maintained, if there is a cocktail lounge, if there is a snack bar, some bowling centers just have vending machines, if there is a pro shop that's available, if

[871]

your personnel are courteous and well trained.

If you have lanes available when the bowlers want them. I think I have touched on most of the major factors.

Q. Do bowling centers advertise at all?

A. Yes, not too much generally, but they do.

Q. And what is meant by "promotion" in the bowling business?

A. Promotion in bowling or in any business are the efforts undertaken to increase sales.

Q. Can you give some examples of what kinds of efforts, promotional efforts are made in the bowling center business?

A. Yes, there are some limited advertising in newspapers, sometimes there are joint efforts in a large area where many centers combine with radio advertising, this would be unusual.

Then there is the real effort which continues all during the year to build new leagues, their constant promotion.

There are efforts to invite ladies into the center in the daytime to either learn to bowl, or if they have learned to bowl to join leagues in the daytime.

There are efforts made with school children to go to school and teach bowling in the schools, or else

[872]

to invite the schools into a center so that they may learn to bowl there.

Or if they have learned to bowl, they continue competition amongst classes or amongst schools themselves.

[873]

Q. When beginners, or ladies, or small children are invited into your centers to bowl, do they usually get, as

an inducement, a special rate of some kind for their first experiences?

A. Yes, that is very often done as part of the promotion.

Q. Now, who was the operator of Fair Lawn Lanes in 1964?

A. American International Bowling Corporation.

Q. And was that, if you know, a fairly good sized chain of bowling centers?

A. Yes, at the time that it went bankrupt I think it was the largest chain. I think it had more lanes in being then than did Fair Lanes. I think at the time of the bankruptcy it was the largest chain in the business.

Q. When AIBC was operating Fair Lawn, did it have any power to exclude Paramus Bowl-O-Mat from competing, to the best of its ability, for bowlers in Bergen County?

A. They were always trying to take our leagues away, and our teams away, and our individual bowlers away.

Q. Were you trying to take theirs away?

A. Yes.

Q. Was that competition?

A. Yes, sir.

[874]

Q. Did Fair Lawn have any power to prevent Pueblo Bowl-O-Mat from competing, to the best of its ability, to get bowlers?

The Court: Not Pueblo.

Mr. Seeley: Paramus Bowl-O-Mat. Thank you.

The Witness: Will you read the question, please.

The Court: Repeat it.

(The question, with the correction, was read.)

A. I can't think of any offhand, Mr. Seeley.

Q. Contrary-wise, did Paramus Bowl-O-Mat have any power that you know of to prevent Fair Lawn from competing for business to the best of its ability?

A. All we could do was keep our place as clean as we could, make it as attractive as possible, teach our employees to smile and say thank you, and do our best to attract more bowlers into our center.

Q. You testified that your company considered bidding for Fair Lawn at the AIBC bankruptcy sale, and then did not, is that right?

A. That is correct.

Q. Was it your company's intention, if it had bid for Fair Lawn, and had won it, to continue it in

[875]

operation?

A. Yes. It was right next to my home in Paterson, it was right next to our headquarters. We thought it would come very easily within the number of centers that we were then managing from our headquarters in Paterson.

Q. If the operation of Fair Lawn had then been transferred from AIBC to Treadway, would that have increased or decreased, or neither, the amount of competition for bowling in Bergen County?

A. You mean instead of having it taken over by Brunswick?

Q. Yes.

A. Well, when Brunswick took it over, they put in a——

Q. My question now excludes Brunswick. If your company, Treadway, had taken over Fair Lawn, would

that have increased or decreased the amount of competition for bowlers in Bergen County?

A. Well, I am trying to answer it as best I could. The fact that Brunswick did take it over, certain things happened, which did have an effect, an adverse effect on us, in competition.

Mr. Seeley: I move that the answer be stricken.

The Court: It is not responsive. So

[876]

ordered.

Listen to the question.

(Question read as follows: "My question now excludes Brunswick. If your company, Treadway, had taken over Fair Lawn, would that have increased or decreased the amount of competition for bowlers in Bergen County?")

A. It would have decreased it.

Q. In what way?

A. There would have been less of the fierce competition between our two centers for leagues.

Q. How about the competition between your two centers and the other centers with which you competed?

A. That would have been the same.

Q. It wouldn't have been any fiercer because you had two centers then instead of one?

A. No, it would have meant that we could have effected certain home office economies in running two centers that were reasonably close together.

Q. You also testified, I believe, that after the AIBC sale you made certain inquiries of Brunswick as to whether Treadway could purchase Fair Lawn, is that right?

A. Fair Lawn, not Fair Lane.

Q. Fair Lawn?

[877]

A. Yes.

Q. And was that with the thought in mind that if you could purchase it you would continue it in operation?

A. Yes.

Q. And if that had happened would the effects on competition have been what you have just described?

A. Yes.

Q. I believe you also testified that at the AIBC bankruptcy sale there were bidders other than Brunswick for AIBC centers, is that right?

A. Yes, there was very active bidding for all of the centers.

[878]

Q. Can you identify any of those who were active bidders?

A. I understand that a Mr. Sidney Friedberg, the president of Fair Lanes, was in court and bid on quite a few. A Mr. Marvin Ollshan, an attorney from New York City, who represented about eight, or ten, or twelve different bowling proprietors, was in court and bid very actively. There was a Mr. Chris Vitolo, whom I understand was in here—I believe, sir; I wasn't in court. I believe there were some gentlemen from Pennsylvania that were bidding for the Pennsylvania centers. But I don't know any of their names.

I just know of some of these men, whose names I have given you, that were here.

Q. Prior to that sale, had it been known by the trustee in bankruptcy, that he was selling the centers subject to their indebtedness to Brunswick?

A. Yes, there was a notice sent out to all interested people indicating the stock of the centers would be sold at the public sale.

Q. And if Treadway had made a bid for Fair Lawn, would it have been your expectation that you would somehow make an arrangement with Brunswick and continue to operate the center?

A. We would have expected to have assumed the debt

[879]

obligations of Fair Lawn Lanes to Brunswick and have met them in the ordinary course of business.

Q. Is it reasonable to assume that any other bidder at that sale had the same idea in mind?

A. I know that Mr. Olshan did; I know Mr. Friedberg understood the realities of purchasing subject to a conditional sale contract at the time.

Q. What change in the bowling competition in Bergen County would have taken place if, say, Mr Friedberg's company had been the successful bidder for Fair Lawn and taken over its operation?

A. No change.

Q. Paramus Bowl-O-Mat now has been competing with Fair Lawn, under Brunswick operation, for somewhat more than seven years, hasn't it?

A. Yes.

Q. During those seven years what, in your opinion, has Fair Lawn done, if anything, which is other than the normal kind of competition in the bowling industry?

A. Well, the first thing they did which had an adverse effect on our center at Paramus, and I think still has an adverse effect, they put in their speeded up A-2 equipment. This is very important in Bergen County, being in the metropolitan area, where the bowlers want to finish up as fast as they can. By the use of the A-2

[880]

equipment the two leagues can finish sometimes twenty minutes to a half an hour earlier than with the equipment that we have.

I think that Fair Lawn attracted then, and still continues to attract, some leagues that might be in our center but for the fact of these A-2's.

Q. Would you say, then, it was a stronger competitor because of that?

A. Yes, I think so.

Q. Does Treadway ever do anything to modernize the bowling equipment in any of its centers?

A. Yes, it tries.

Q. And what is the purpose of that?

A. To have our centers at all times as updated as possible.

Q. So as to make them as competitive as possible?

A. Yes, we want to attract as many bowlers as we can at all times.

Q. Is Brunswick the only company which makes a fast ball return, such as the A-2 thing is?

A. Well, AMF, your major competitor—of Brunswick—has a machine, but I don't think that it speeds it up at all. I think Brunswick's A-2 certainly does speed it up, and much more so than the AMF machine.

[881]

Q. This A-2 can be purchased as an addition to the original model Brunswick pinsetters, can it not?

A. Yes.

Q. You don't have to put in a whole new machine?

A. No, but it costs $1500 apiece.

Q. Do you know of any bowling center operators, other than Brunswick, who have installed them?

A. Yes.

The Court: A-2's?

Mr. Seeley: Yes, sir.

The Court: In Bergen County?

Mr. Seeley: Anywhere.

The Court: All right.

Q. Do you know of any in Bergen County?

A. No, I really don't.

Q. Has Fair Lawn Lanes, under Brunswick's operation, prevented Paramus Bowl-O-Mat from competing for bowling business, to the best of its ability?

The Court: Repeat that, Mr. Reporter.

(Question read.)

Mr. Hoffmann: I object——

A. Yes.

Mr. Hoffmann: —to the form of the question.

The Court: He has answered it already. He

[882]

said yes.

Q. The answer was yes?

A. Yes.

Q. In what way?

A. Well, as soon as Brunswick took over, they had not only in Fair Lawn but throughout the country, a very cut rate program for school children. They charged a price—I am a little bit hazy now—but we were charging about $1.45 for something which Brunswick sold for a dollar.

They gave away free hot dogs, and free shoes, and did attract a lot of children that had been bowling in our center.

On another occasion I believe they gave away—I know Ten Pins did; I think Fair Lawn did, too—they gave away certain trophies and things—my staff people would know this better—that we hadn't given away. I know that was true in Pueblo. I think it was true in Fair Lawn's case.

They had a very important program, which I think still continues, on going to Europe, with all of the Brunswick centers, all over the country, participating. That was an important inducement to bowlers. I remember that several of our managers around the country wrote to us about this, something that we couldn't afford to

[883]

have as competition.

I think these are the large major areas. I think at one time, too,—yes, we were selling—in those days we sold nothing but Brunswick equipment in our pro shops. Every nickel—everything we had came from Brunswick —our shoes, our bags, our balls. And I think—they were price fixed. And then we learned that in Fair Lawn Brunswick—the Brunswick center—was selling the identical ball, but with a different name on it, at a lower price.

I think that is the end of the things I can think of right now, Mr. Seeley.

[884]

Q. Now, the special prices for children, and the "bowl your way to Europe," those are what you call promotions, are they not?

A. Yes. Cutting prices is promotion, too. But—yes.

Q. And the purpose is to attract additional bowlers?

A. Yes.

Q. Do programs for teaching bowling to children, and other beginners, in your opinion, have any beneficial results for the bowling business as a whole, in addition to the particular center where the lessons may be given?

A. Well, Brunswick's program, their cut-rate program that summer, wasn't to teach children how to bowl. They were children who were already knowledgeable about bowling.

Q. It was to encourage them to bowl?

A. Just have them bowl and pay for it.

To answer the other part of your question, yes, these efforts are intended to build more bowlers.

Q. This, "bowl your way to Europe" program that Brunswick had, do you know how many people out of all of the bowlers in Brunswick centers were able to win trips to Europe?

A. No, I don't.

[885]

Q. Suppose Treadway were to take a quarter of a cent per line from its lineage, could it send two bowlers to Europe on a de luxe tour?

A. We were losing money in Paramus, and have been losing money at our present price. If we reduce it by a quarter of a center, we would lose more money.

Mr. Seeley: I move to strike the answer.

The Court: Repeat the question.

(Question read as follows:

"Suppose Treadway were to take a quarter of a cent per line from its lineage, could it send two bowlers to Europe on a de luxe tour?")

The Court: I think the answer is fairly responsive. They were losing money and this would cost them more money. Isn't that what your answer is, essentially?

The Witness: Yes, sir.

The Court: I will let it remain.

By Mr. Seeley:

Q. Does a business sometimes spend money to make money, to increase its business?

A. Yes, Mr. Seeley.

Q. Do you think it would have increased the business of the Treadway houses to have a European travel promotional program, if it could have been done for a

[886]

quarter of a cent a line?

A. I think, sir, if we could have afforded it, the answer would be yes, I would like to try it. I think our staff would love to do that.

Q. Were there any other bowling centers in the Bergen County area, that you know of, which had promotional programs which Paramus Bowl-O-Mat did not have?

A. That's a rather broad question. I would have to say that I can't think of any.

Q. What were the promotional programs which Paramus Bowl-O-Mat had?

A. Yes, sir; I can answer to that.

Q. All right.

A. I think I endeavored to answer that question earlier, that we have a constant program of always working with individual bowlers, to ask them to join leagues.

At the right time of the year we try to create winter leagues and then summer leagues.

This is done by our managers, or regional managers, visiting the bowlers, having them sign up about joining—having our desk people often wear buttons about the organization of leagues. A great bulk of our business comes from the organization of these leagues.

We have been very constant in our efforts to

[887]

attract ladies to come into our center in the daytime by telephone solicitation. We have done this for many, many years, as have many other proprietors, as well.

We have had a school program for many years in Paramus, where we taught so many children to bowl. They have grown up now and are real bowlers.

We have had follow-up programs by mail. When the season opens up and we find that Harry Smith or Mary Jones, who bowled with us last year, isn't with us now, we try to find out why didn't he or she come again.

So these are some of the efforts that we are constantly exercising to build our business, as well as the basic things of having a clean center, nicely carpeted, attractive, well policed, ladies' rooms clean, men's rooms clean, desk personnel trained to smile and say thank you; our desk personnel properly attired, with a jacket, with a Bowl-O-Mat emblem.

These are all part of promotion, in our sense of that word.

Q. Except for the smiles—which I think are free—do most of the things which you have mentioned involve some cost?

A. Not to be facetious, but the smile is the most difficult—most expensive of all of these things.

[888]

The question was: Do these promotions involve a cost?

Q. Yes, some cost.

A. Well, to keep the men's and ladies' rooms clean, we have the janitors. It's just a matter of making sure that they do their job properly. Yes, there is a cost for telephone solicitation. There is a small cost for direct mail campaigns.

But basically, our regular staff is able, during the normal course of their activities and duties, to handle these promotional efforts.

[889]

Q. At Paramus Bowl-O-Mat do you furnish any prizes for leagues, trophies, or anything like that?

A. I may be in error, sir—years ago, yes, but I believe that our staff would know better. I think in more recent years we have eliminated those. I may be in error. I think we still may give some trophies to leagues at the end of the season.

Q. Well, is it a proper characterization of what you have been telling me that, in your opinion, Fair Lawn under Brunswick operation has been a more aggressive competitor than someone else might have been?

A. Yes, I think that is a fair statement.

Q. Pueblo—pardon me. I do that because I did it in dictation, and Pueblo is written down here.

Paramus Bowl-O-Mat has not been indebted to Brunswick since early 1966, has it?

A. That is correct, all of its obligations were paid in full in January of 1966.

Q. And you are not claiming, are you, as to Paramus Bowl-O-Mat, any damages because of discrimination in credit terms?

A. No, our damage claim in Pueblo arises—excuse me, sir. You are very persuasive.

Q. It is easy to do.

A. In Paramus—

[890]

The Court: You are not doing it on purpose, are you?

Mr. Seeley: No, sir.

A. Our damage claim in Paramus we restricted yesterday to the time of the opening of Fair Lawn Lanes and Interstate Lanes under Brunswick's direction.

Q. Has Fair Lawn Lanes, under Brunswick operation, any power to prevent Paramus Bowl-O-Mat from competing for business to the full extent of its ability to do so?

A. Yes.

Q. What does it stop Paramus Bowl-O-Mat from doing?

A. That wasn't your question, sir.

Mr. Seeley: Let's have the question read, to be sure that we are on the same track.

(Question read as follows:

"Question: What does it stop Paramus Bowl-O-Mat from doing?")

A. Well, I am trying to answer the other question, to which I said yes. Fair Lawn has the power to now put in automatic scorers, which are very expensive, which we couldn't afford. They have the power to cut the price, if they want to. Ten Pins, which is right next to us, has had for years a lower price than we. We have had a

[891]

terrible problem with Ten Pins' pricing. They can take our managers away by offering more money. We have had that problem over the years from time to time. They can have ten people go to Europe instead of one people go to Europe.

There are many, many things they could do which would make our lot even more difficult than they have made it these last eight years.

Q. Are there any things like that that you could do to Fair Lawn?

A. Not that I can think of, not with our losing money as we still are in Paramus.

Q. You couldn't hire away any Fair Lawn employees, or Brunswick employees?

A. Sure, we could. But then we would be increasing our losses.

Q. What would happen if you lowered your price?

A. If we lowered our price I think we would just lose more business.

Q. When was it that Brunswick took over Ten Pins?

A. I think it was in 1969.

Q. Did any change in price of bowling at Ten Pins occur at that time?

A. Yes.

Q. What was the change?

[892]

A. I think the price was reduced a little bit.

Q. Is your recollection clear about that?

A. Yes. Yes, I know in my discussion with our staff people about our business in Paramus, I learned constantly that the Ten Pins on the Mall, which is right next to us, charges less for their play than we are charging. As

a matter of fact, they charge less than Lodi. They charge less than Fair Lawn, your Ten Pins operation.

Q. Who operated Ten Pins before Brunswick began to operate it?

A. Mr. Tom Granatelli, and a partner, whose name I don't know.

Q. Did they operate it from the time it opened until 1969?

A. Yes.

Q. During that time were the prices at Ten Pins lower than they were at Paramus Bowl-O-Mat?

A. I don't think so. We were always just about the same.

Q. Before Ten Pins opened, but when it was under consideration, your companies made efforts to become the operator of that center, did you not?

A. Yes.

Q. And at that time was the building where the bowling center was going to be located in existence, or

[893]

was it just on the drawing board, or was it under construction?

A. Well, it was in the large shopping center in Paramus that the Allied Store Corporation was building. It was to go downstairs. I think the top structure was already in being. I think the downstairs was just—if I remember—was excavated.

• • •

[894]

Q. Mr. Lieblich, did Brunswick when it took over the operation of Fair Lawn in 1965 start right in the first year

with these aggressive, competitive measures that you mentioned?

A. Yes.

Q. And continued them so long as they continued to operate?

A. Well, they haven't removed the A-2 equipment, that's still in there.

Q. How about the Bowl Your Way to Europe?

A. I think, sir, that's a constant Brunswick promotion.

I think recently I was in a Brunswick center and I picked up a leaflet, I think that's still being done throughout the country.

Q. And the special youth price; is that a continuing thing?

A. No, I don't believe they have done that in the last few years.

Q. In general, would you say that Brunswick's method of operating Fair Lawn has been about the same during the seven-year period that they have operated it?

A. Yes.

[895]

Q. You mentioned the fact that you thought Brunswick had the power to hire away Bowl-O-Mat employees.

Do you have in mind any instance where Brunswick did hire away a Paramus Bowl-O-Mat employee?

A. Well, I remember a Jack Klausmayer, who passed away some years ago, had been one of our original supervisors, and he left to go to work for Brunswick.

Later he returned to our company, but he left.

Q. When was that?

A. Oh, gosh, well, it was after BCOD was in operation, so Jack passed away now for about four years.

I guess about 1965 or 6.

Q. Do you know any other instances where someone left your company and went to work for Brunswick?

A. Directly or over a span of time?

Q. Directly.

A. There was a John Mahelevich. John had been a manager for us in Des Moines, Iowa.

Then I think we had given him some additional regional manager responsibility, and John went to work for Brunswick in their BCOD operation.

There was a lapse of time.

Q. There was a lapse of time between?

A. Yes, not too long, but a lapse of time.

[896]

Q. Any others that you can think of?

A. No.

Q. What was the first full year that Paramus Bowl-O-Mat was in operation?

A. It opened for business, I believe, on or about September 1, 1958.

Q. Do you recall what its profits or loss was in the first year of its operation?

A. No, it was a very profitable one, but I don't have the figures.

Q. Do you have the approximate figure in mind?

A. It is not fair to guess, Mr. Seeley. I know we were doing 15 and a half thousand lines per lane, which made it a very profitable center.

If I were to guess, I'd guess it probably made 60 or $70,000.

Q. And do you remember what the profit was in 1960?

A. Yes. The lineage remained at that very high figure for the first three years.

Q. And did the profit remain at that same figure?

A. Yes. I don't remember exactly what they were, but I do remember it was quite profitable.

Q. Now, in 1961, I believe Paramus Bowl-O-Mat

[897]

had a profit of some $43,800; is that right?

A. I think that's what I testified to.

Q. Would you like to get out some papers——

A. Mr. Hoffmann, there is a chart on Paramus, if you give that to me, I could—I may have it in my briefcase——

Mr. Hoffmann: Exhibit 13.

The Court: It is in evidence. Statement of income and revenue—that's 1965 through 1972.

The Witness: Yes, I have a copy.

The Court: P-13 is Paramus?

The Witness: Yes, I have a copy.

Q. What was the profit in 1961?

A. $37,746.

Q. What was it for 1962?

A. $17,419.

Q. Now, what happened between 1961 and 1962 that accounted for that drop in profits?

A. Some additional bowling centers that began to open in the area.

Q. Do you know which ones they were?

A. It is really hard to pinpoint for each year so I will have to say I just don't recall which ones.

Q. In 1963, what was the profit of Paramus

[898]

Bowl-O-Mat?

A. No profit. We lost $3,922.

Q. What happened between 1962 and 1963 which accounted for that in your opinion?

A. Yes, now that I can be sure of because that was when Ten Pin opened up right next to us in Paramus.

Q. So it was the additional competition from Ten Pin which caused that; is that right?

A. Yes, I believe so—yes.

Q. And then in 1964 what was the profit?

A. We had a profit of $14,840.

Q. What caused that change from the previous year's loss to a profit?

A. My best memory, as I said the other day, I think the landlord gave us some relief because of the difficulties that we were experiencing.

Q. In 1964 when you made $14,840, was Fair Lawn in operation?

A. Yes.

Q. And was Interstate in operation?

A. Yes.

Q. And was Ten Pin in operation?

A. Yes.

Q. And was Lodi Lanes in operation?

[899]

A. Yes, I believe so.

Lodi opened a little bit later, but I think Lodi was in operation in 1964.

Q. Then in 1965 what were the results?

A. A loss of $1,644.

Q. Now, aside from the fact that in 1965 the operation of Fair Lawn and Interstate changed from AIBC to Brunswick, do you have in mind any other changed competitive conditions at that time?

A. Yes. Certain of the practices that Brunswick did in Fair Lawn, as soon as they took it over.

Q. I am asking if you know of any change in competitive conditions other than were brought about by Brunswick's taking over Fair Lawn?

A. I'm sorry, Mr. Seeley, I misunderstood your question.

No, I don't. The other factors were generally the same.

Q. And then what were the profit or loss results at Paramus in 1966?

A. We lost $39,894.

Q. That's a drop of how much from the previous year?

A. $38,000.

We lost an additional $38,000 that year.

[900]

Q. And to what do you attribute that?

A. I think the A-2's that Brunswick put in Fair Lawn, its aggressive competition with us, and just a general worsening of the bowling business in the area.

Q. I'd like to have you tell us more about the worsening of the business.

What were the causes of it?

A. It is just common knowledge. These were the terrible years in the bowling business when so many people were going out of business.

There was just a decrease in the interest of people in bowling.

Q. I see.

How long did that decrease of interest continue?

A. Right up until the end of 1970. Suddenly, about that time, sir, not just in Paramus but everywhere in country, we began to see, and everyone in the industry began to see, a reversal of their losses of prior years.

Suddenly bowling began to get to be a much better business, and the year now underway is just a fine year.

Q. Now, after 1966, Paramus Bowl-O-Mat continued to lose substantial amounts of money each year, did it not?

[901]

A. Yes.

Q. And during those same years, do you know whether Fair Lawn lost money, or made money?

A. I can tell, sir, by looking at the spread sheet on that.

Q. Fine, yes. What?

A. Fair Lawn Lanes did make money in all those years.

The Court: What years were they?

The Witness: 1966, 1967, 1968, 1969, 1970, 1971 and 1972.

Q. How about Interstate Lanes?

A. Yes, they made a fine profit, too, in each of those years.

Q. Looking at the matter of profits which Fair Lawn and Interstate made in those years, would you say that those two houses were able to afford the cost of the A-2s and of the promotional efforts which they were making during that period?

A. Yes, I would have to answer that question, yes.

The Court: What about Ten Pins?

The Witness: They were losing money, sir.

• • •

[903]

Q. And Ten Pins on the Mall lost money under Brunswick's operation in 1969, didn't it?

A. Yes.

Q. And in 1970?

A. Yes.

Q. And in 1971 what did it do?

A. It made a profit.

Q. In 1972 what happened?

A. It had a loss. It has a loss three of the four years.

Q. Now, sir, I'd like to go from Paramus, New Jersey, to Poughkeepsie, New York.

As I understand it, you purchased the Holiday Lanes in Wappingers Falls?

A. Yes.

Q. And when was that?

A. In December of 1960.

Q. And at that time what were the other bowling centers which were in existence in that competitive area?

A. Well, I believe that Hoe-Bow was there, that Mardi-Bob was there, Touponce Lanes I am quite sure was added a few years afterwards. Mrs. Levine's center—it had a fire at one time, I think it was there when we acquired it, and then it burned down and reopened or it burned down just before we bought ours, but it was

[904]

sometime in that span of two or three years that there was a fire and it was rebuilt and she reopened.

Q. Was there one named Hyde Park?

A. Yes. I think that was added a few years after 1960, but I may be in error.

Q. Approximately when, to the best of your recollection?

A. I would guess that Hyde Park, I would think that Hyde Park opened approximately 1961 or 1962.

Q. And to the best of your recollection approximately when did Touponce open?

A. I think about the same time, Mr. Seeley, 1961 or 1962.

Q. And after 1961 or 1962 did the number of bowling centers then remain the same until at least 1965?

A. Yes.

Q. Now, did Holiday Bowl-O-Mat compete with all of these other centers that you have named?

A. Yes.

Q. Did you when you purchased the Holiday Bowl-O-Mat make any inquiry into the number of persons per bowling lane in the area?

A. No, we bought Holiday Bowl-O-Mat after I examined its profit and loss statement and was satisfied it was a profitable operation.

[905]

Q. Do you have any idea—did you get any idea or knowledge later as to what the ratio of persons to lanes is in that area?

A. Only from a Brunswick survey that I saw some years after the event.

Q. And that said 700-something; is that right?

A. Yes.

Q. Do you think that was correct?

A. I don't know.

Q. Well, whatever the number of persons to lanes was in 1965, it wouldn't have been any higher in 1960, would it?

A. Well, the Poughkeepsie area which was so very, very prosperous in those earlier years, the prosperity resulted from the great expansion of IBM in the area. They had there then one of their largest plants, I think they made electric typewriters there, it is one of their biggest plant facilities.

About sometime around 1962, I believe, or 1963, they moved their typewriting production to another area, and I know that a lot of the IBM employees left the area.

I know a nephew by marriage works for IBM, and I used to visit him up in Poughkeepsie, and he was transferred, and there were many For Sale signs as I visited on their homes on occasions.

[906]

So there was in those few years a bit of a depression in the Poughkeepsie area.

Q. Who was the operator of Mardi-Bob?

A. Mr. Robert Hoe, Bob Hoe.

Q. And he still is?

A. Yes, he is.

Q. And who is the operator of Hoe-Bow, the same man?

A. Yes.

Q. And when Touponce came into existence, who operated that?

A. There is a Mr. Touponce. I think he passed away recently, but there was a Mr. Touponce.

Q. Do you know who operates that now?

A. I think Mrs. Touponce, yes, I think she does.

Q. Who operated Hyde Park?

A. I don't recall.

Q. Now, did Mr. Hoe by reason of owning two bowling centers in Poughkeepsie have any power to prevent Holiday Bowl-O-Mat from competing for business to the best of its ability?

A. I don't think so.

Q. Did you as the owner of Holiday Bowl-O-Mat have any power to prevent Dutchess Lanes from competing to the best of its ability?

[907]

A. No, I don't think so.

Q. And vice versa, I suppose?

A. No, that isn't true.

Q. Did Mrs. Levine as the operator of Dutchess Lanes have any power to prevent Holiday Bowl-O-Mat from competing?

A. Mrs. Levine, no.

Q. It's only when you get to Brunswick that you say that—

A. The price was cut at Dutchess Lanes.

Q. When was that?

A. After Brunswick took it over.

Q. Did that prevent you from competing for business?

A. It made it more difficult for us to get league business. The fact that our business has improved so much since Dutchess closed down—

Q. Just a minute, I don't want to cut you off from making a full answer—

A. Excuse me.

Q. Please don't go on from there.

Mr. Hoffmann: May I hear that comment read back?

(Record read.)

Mr. Hoffmann: Your Honor, may I ask if the

[908]

witness has more, and he was about to answer, that he be permitted to answer the question?

The Court: I think what Mr. Seeley is getting at, don't volunteer any information, try to be responsive.

Mr. Seeley: That's right.

The Court: All right, proceed. What's the next question?

Q. Was Holiday Bowl-O-Mat profitable during the years 1960 to 1965?

A. Yes, every year.

Q. And was it profitable in 1966?

A. Yes.

Q. And in 1967?

A. Yes.

Q. What was the profit in 1967?

A. $17,392.

Q. And then what happened in 1968?

[909]

A. Our lineage decreased and we lost $39,190.

Q. That's a drop of over $50,000 from the previous year; is that right?

A. That's right.

Q. What happened that caused that?

A. Well, Dutchess was taking some of the business that we thought should have been at our center, and again it was just a general decline in the interest in bowling in the area.

I think, also, sir, a more complete answer, it may have been at that time that Mr. Hoe put on a small addition or a—an addition to one of his bowling centers.

Q. How much of an addition, do you know?

A. I think he went from—I think he added 12 lanes or 14 lanes to one of his centers.

Q. Would that increase the amount of competition?

A. Oh, yes.

Q. Did any other bowling center add lanes shortly after 1965?

A. I think that Mr. Touponce increased his center from 16 lanes to 24 lanes about the same time.

Q. And did that also increase the competition in the area?

A. Yes, it did.

[910]

Q. Could that have had anything to do with the decline in the profitability of Holiday Bowl?

A. Yes.

Q. And then in 1969 was there a loss of some $51,000?

A. Yes, that was the year of our greatest loss.

Q. Now, what was Brunswick doing differently at Brunswick lanes in 1969 when Holiday lost $51,000 than it was doing in 1967 when Holiday made $18,000?

A. Just keeping it alive.

The Court: When did Dutchess close, do you recall?

The Witness: Yes. The latter part of 1969, it was in about May or June, sir, of 1969.

The Court: Because I notice, Mr. Seeley, on P-47, on page 9, item 298, there aren't any figures of Dutchess in 1969.

Mr. Seeley: It was closed before the end of the year.

The Court: Yes.

Mr. Seeley: That's right.

The Court: What is the basis of authority for the loss? You just testified as to certain losses of Dutchess lanes.

The Witness: They closed in May of 1969.

[911]

The Court: What is the authority for the amount of money that they lost in 1969, because I don't see it on P-47?

The Witness: I misunderstood your Honor's question.

The Court: Let me put it this way: In P-47, it is an analysis of profit and loss of BCOD centers, right?

The Witness: Yes.

The Court: Item 298 on page 9 doesn't show anything in 1969 or thereafter.

The Witness: Yes, because it wasn't being operated at the end of the year.

The Court: Only operated for a certain portion of the year?

The Witness: Yes.

The Court: All right.

By Mr. Seeley:

Q. What was the month in 1969 as near as you can remember when—

A. May and June 1969.

Q. So that it was not in existence at a time when it would affect Holiday's results for the year ending August 31, 1970?

A. That's right.

[912]

Q. And in the year ending August 31, 1970, did Holiday lose $27,000?

A. Yes. It lost $24,000 less than it lost in the prior year. It had improved by $24,000 after the close of Dutchess.

Q. Excuse me, I didn't mean to interrupt you—

A. All right.

Q. When I'm looking down and you stop for a minute, I tend to think you are through, but maybe you're not.

A. I'm sorry.

Q. And in 1971 what was the result of Holiday Bowl-O-Mat?

A. We made a very small profit, $1821.

Q. But that was about—it made you about $29,000 better off than the year before?

A. Yes.

Q. To what was that improvement due?

A. Well, at this point Dutchess was already closed for over a year, because it closed too late in 1969, we weren't able to get the leagues, the league season, Mr. Seeley, begins on September 1, Dutchess closed in May or June of 1969, consequently we should have signed up already, we sign up generally in January, February and March, we should have signed up already our winter

[913]

leagues for September 1 of 1969, but we didn't get them.

The next year, since Dutchess was closed for a year, we were able to contact, solicit and promote former Dutchess bowlers to come into our center.

Q. Did you make any record of the actual number of Dutchess bowlers who after Dutchess was closed became regular bowlers at Holiday?

A. I don't recall that.

Q. Can you state how many leagues which formerly were Dutchess leagues subsequently became Holiday leagues?

A. No, I cannot.

Q. Now, in 1972 you had a very fine improvement in profit at Holiday, did you not?

A. Yes.

Q. From $1800 to $47,800?

A. Yes.

Q. And to what do you attribute that?

A. A lessening of the competition in the area with Dutchess closed, plus the fact that bowling generally throughout the whole country has improved, plus the fact that we were able to get a little better price for our games now than we had been two years earlier.

IBM, I think, has increased its employment again in the area. I think these are all factors in addition

[914]

to the shutdown of Dutchess that have created a fine improvement, almost $100,000 improvement since Dutchess closed down.

Q. And is it your opinion then that the almost $50,000 of improvement at Holiday in 1972 can be traced back in substantial part to the closing of Dutchess in 1969?

A. Can I see the exhibit?

The Court: I think we have a smaller edition of that, do we not?

The Witness: I have a copy.

(Record read.)

A. No, I think between 60 to 75 thousand dollars can be attributed to the shutdown of Dutchess.

Q. Of profit?

A. Of bowling.

Q. At the end of your 1968 fiscal year when Holiday had lost $39,000 did Treadway give any consideration to closing it?

A. No.

Q. And at the end of your 1969 fiscal year when Holiday had lost $51,000 did Treadway give any consideration to closing it?

A. No. Dutchess was already closed down and we knew that our future would be profitable.

[915]

Q. Going back to Paramus Bowl-O-Mat, sir, in 1967 after Paramus Bowl-O-Mat lost $37,000 in 1966 and $48,000 in 1967, did you give any consideration to closing it?

A. No, all of our equipment was free and clear.

Q. And in 1968 when it lost over $68,000 did you give any consideration to closing it?

A. No.

Q. And in 1969 when it lost $55,000 did you give any consideration to closing it?

A. No.

Q. In 1970 when it lost $55,000 did you give any consideration to closing it?

A. No.

[916]

Q. Now, what were your business reasons?

A. Number one, we had already filed our antitrust law suit against your client and we were very confident of the outcome. We certainly didn't expect that even Lodi would be taken over to compete against us.

We looked forward to ultimately a successful and happy end to our Paramus nightmare.

Q. And does a successful and happy end of this litigation mean to you that Fair Lawn and Ten Pin are going to be closed?

A. My concern is with the profitability of our Paramus Bowl-O-Mat location.

Mr. Seeley: I move that the answer to the question is not responsive.

The Court: Repeat the question and the answer.

(Record read.)

The Court: I will permit that answer to remain. But, also, I want him to answer that question, too.

Repeat the question. I want that answer to remain.

(Question reread.)

A. Not necessarily.

[917]

Q. Suppose they were to remain open, what prospects do you think there then would be of Paramus Bowl-O-Mat becoming profitable?

A. If the jury and the Court would restrict their activities so that fair and proper competition could remain now, and we could be assured that it would remain in the future, many of our concerns would then be put to rest.

Q. Suppose those two centers, and Interstate, were to be sold to some independent operator, such as Mr. Friedberg's company, what would that do to relieve the losses you are suffering?

A. Then we would take our chances of competing on an equal basis with anyone else.

Q. If you saw that there apparently was no prospect of making Paramus Bowl-O-Mat profitable by taking your chances in competing, would you close it?

A. I think our board of directors would insist that we do that.

Q. When National Bowl-O-Mat Company was organized in 1961, was it with the realization that there might be more bowling centers constructed?

A. Oh, yes, sir; by our company.

Q. No, in competition, to operate in competition with your companies.

[918]

A. That prospect was, of course——

Q. It was something you had no control over, is that right?

A. That is correct.

Q. And you looked forward to the possibility—I don't mean you looked forward, but you foresaw the possibility, is that correct?

A. Yes, of course.

Q. In your Holiday Bowl-O-Mat, what, if any, kinds of promotional efforts do you undertake?

A. I would say identical to those I have described in Paramus. Our promotions are generally planned from our home office and our regional supervisors are entrusted with the responsibility of seeing that all these programs are carried out the same way in all of our centers, unless there is a particularly unusual situation in a community which wouldn't lend itself toward that promotion.

Q. Well, was anything unusual done after Dutchess closed?

A. Yes.

Q. What?

A. I am sure that we tried to reach every one of the bowlers who have been at Dutchess to try to get them to our center.

[919]

Q. Then that would be by mail, telephone and various ways like that?

A. Yes, Mr. Seeley.

Q. Was Paramus Bowl-O-Mat able to survive during the years it's been losing money because of help Treadway Companies could give it?

A. Yes.

Q. You don't see anything wrong, do you, in a parent company helping its subsidiary to survive, with financial help?

A. Well, Brunswick had required our parent company to guarantee the obligation of Paramus. If it had not been for that, perhaps we would have closed Paramus some years ago. But once that guarantee was given, and once our parent company had advanced more moneys to Paramus to enable it to pay in full, the debt obligation to Brunswick, there was.

Q. But that obligation expired in 1966, did it not?

A. Yes.

Q. And Treadway continued to advance money to keep Paramus Bowl-O-Mat going thereafter, did it not?

A. Yes, as was required.

Q. My question was: Did that seem to you a proper business practice?

[920]

A. Yes.

Q. You do not feel that it was unfair to any of Paramus Bowl-O-Mat's competitors for Treadway to do that?

A. No, I don't, sir.

Q. There was some testimony about the lease of the Dutchess Theatre. Do you recall that it was mentioned that the lease which Mrs. Levine had called for, I think, $36,000 a year, and that Brunswick negotiated a new lease for, I think, $24,000 a year?

A. Yes, there was such testimony, I believe, the other day.

Q. Do you know who Mrs. Levine's landlord was?

A. I think it was a real estate company that was owned by her children, her husband's estate, and herself, I believe.

Q. So that if Dutchess was paying the 36,000, it was, in effect, paying it to the same people that owned it, is that right?

A. No.

Q. No? Who owned Dutchess?

A. I think Mrs. Levine herself.

Q. And the rent would be paid to——

A. To her children.

[921]

Q. Her and her children?

A. Yes. That's my best memory.

Q. Would you have paid $36,000 rent for that 26-lane house in 1965?

A. No, I don't think that I would have. I know I wouldn't.

Q. Sir?

A. No, definitely would not have.

Q. Would you have paid $24,000?

A. No. Any intelligent businessman, looking at the figures, wouldn't have paid anything for rent, because they couldn't make a profit out of it.

Q. Is there such a thing as a rule of thumb standard of what a bowling center can pay per lane for the rental of the premises?

A. Yes.

Q. What is that?

A. For a profitable operation we have a rule of thumb of $1,000 per lane, which means in a profitable operation, if you have a 40-lane bowling center, you can afford to pay a landlord $40,000 a year rent.

Q. The landlord sometimes wants you to, doesn't he?

A. Very often, sir.

Q. And if you are stuck on a lease, you have a

[922]

little problem?

A. That's true.

Q. Right. Now, I would like to shift the questioning for a little while to Pueblo, Colorado.

In Pueblo Bowl-O-Mat did Pueblo pay Brunswick its equipment obligations up to December 1961?

A. Yes, I believe that it did.

[923]

Q. And then at the end of 1961 did it stop making any payments to Brunswick and not make any more until sometime in 1964?

A. No, that is not entirely correct, sir. Pueblo did pay Brunswick during 1962 $20,000 on its lanes contract, and then beginning in February of 1962 held off any further payment on that, or on its pinsetter payments, since it had requested a rescission of the purchase order with Brunswick.

Q. During that time were there negotiations between you and Brunswick about resuming payments?

A. The negotiation was: Would Brunswick take the center back from us or not?

Q. And did they want it back?

A. No.

Q. Did you want to give it back?

A. Yes, sir.

Q. Then did there come a time in 1963, in the early summer, when Pueblo Bowl-O-Mat and Brunswick negotiated an extension agreement of the remaining indebtedness?

A. Yes, that was part of the overall settlement of our request to rescind the purchase agreement.

Q. And in connection with that, the considerations are recited in the release, the waiver of interest

[924]

charges the cancellation of some of the open account, and so forth, is that right?

A. I don't recall if that was recited in the release or not.

Q. Well, whether it was or not, is it a fact that the wiping out of those items—to which you have testified, I believe—took place at that time, Spring of 1963?

A. Yes, Mr. Seeley, that's true.

Q. And when were the payments to resume under the agreement which was reached in Spring of 1963?

A. In October of 1963.

Q. During the period of time from the beginning of 1962 until the middle of 1963, when Pueblo Bowl-O-Mat was not paying Brunswick, was that with Brunswick's permission?

A. No, it was as a result of our demand for a rescission of the purchase agreement, and to restore us to where we would have been if it had not been for misrepresentation.

Q. But that was not due to any extension or forebearance, I take it, that Brunswick granted, is that right?

A. No, that was our position.

Q. Right. And then from the period from July

[925]

1963 to October, when you weren't paying them, that was pursuant to an agreement with Brunswick?

A. Yes, under the refinance agreement payments were not to begin until—as I best recall—October or November of 1963.

Q. From October 1963 to October 1964, did Pueblo Bowl-O-Mat pay the full amount of its equipment obligations under the extension agreement?

A. From my records here, sir, I don't know if they paid—I know they paid $30,000 to Brunswick from the period October 1963 through the end of the fiscal year, which was August 31 of 1964. The following year they paid off the contract in full.

Q. But you don't know whether or not that was the amount that was due during that period?

A. Not without checking further in the record.

Q. You have no recollection of Brunswick pressing you for additional payments during that period?

A. Yes, you are right. I am sure they did press us, right. They pressed us.

Q. What do you know about whether Brunswick was pressing the operator of Belmont Lanes?

A. He told me no.

Q. When did he tell you that?

A. In Colorado Springs.

[926]

Q. When?

A. I can't remember the time. But I remember Mr. Holt did tell me that he wasn't making any payments to Brunswick. And the record I have from Brunswick reflects the truthfulness of his statement.

Q. Did he tell you that Brunswick was not pressing him for payment?

A. No, I don't think he ever said that.

Q. Do you know whether or not Brunswick was pressing for payments?

A. I can't answer that question.

Q. Do you know of any part of what Belmont Lanes owed Brunswick which it foregave?

• • •

[927]

A. Yes.

Q. What did it forgive?

A. Well, looking at my notes, which came from the Brunswick payment card on Belmont, after an original deposit was received there was a note balance of $405,000. Nothing was paid—if I can use a thousand dollars as nothing in terms of this amount of money.

The contract was then re-written some years later—a year later—for still the same amount, without adding additional interest for the time—that

[928]

they were in default.

Q. Was that substantially what Brunswick did with you in 1963—

A. No.

Q. —rewrite the amount of the indebtedness, with the interest waived?

A. No. Brunswick settled a claim with us. And we were trying to give them back the center and they wouldn't take it back. I think they are quite different.

Q. Regardless of the circumstances, is it true that Brunswick did forgive interest to Pueblo Bowl-O-Mat for a period during which it had not paid?

A. I wouldn't consider the settlement of an important claim for rescission, based on fraud and misrepresentation, in the terms you have used it in your question, sir.

[929]

Q. Did Brunswick relinquish its legal right to claim interest from Pueblo Bowl-O-Mat during the period prior to that settlement that Pueblo Bowl-O-Mat had not been paying?

A. It was a settlement, yes.

Q. Yes.

A. Under the settlement, yes, they waived interest over a period of time.

Q. Do you know when Brunswick repossessed the equipment in Belmont?

A. Yes.

Q. When?

A. I happened to have been there that week and I saw the sign up on the door. It was in April of 1965, I believe.

Q. That's when Brunswick took over the operation, is it not?

A. Yes.

Q. Do you know when the repossession of the equipment took place?

A. I know that Mr. Holt's company was running it right up to the very day that the sign appeared on the door.

Q. Do you know under what kind of arrangements?

A. No, I don't.

Q. Do you know whether any efforts were being

[930]

made by Mr. Holt's company and by Brunswick to work out some kind of a program to save that house for Mr. Holt?

A. No, I don't.

Q. It is true, isn't it, that in Fort Lauderdale, Florida, when you were trying to work out a sale of the Fort Lauderdale Bowl-O-Mat, that also Brunswick withheld repossession action and let you try to work it out?

A. Circumstances were different there, sir. We had already paid a quarter of a million dollars to Brunswick. Brunswick already had all of its money out. They had already realized a significant profit.

Here at Belmont Lanes they didn't receive a nickel for—they received $2,000 in a period of three years.

Q. Is your answer to my question yes or no?

A. I say the facts are different.

• • •

[931]

Q. • • • Now, Pueblo Bowl-O-Mat has lost money, has it not, in each and every year that you have operated it?

A. Yes, sir.

[932]

Q. And I believe you testified on your direct examination that the reason Treadway was keeping it open was that you believed that sooner or later one of its competitors would fold and that would improve the position of Pueblo Bowl-O-Mat, is that right?

A. I had Belmont in mind.

Q. You had Belmont in mind?

A. Yes.

Q. Is it possible that—what is the name of that 32-lane house?

A. Bowlero.

Q. Is it possible that as a result of your doing this it might be Bowlero that would fold?

A. No, I never thought so. One way or another, Bowlero manages to just stay in there.

Q. So then, in effect, you have kept Pueblo open, and paid its losses through the years, looking forward to the day when Belmont would close, is that right?

A. Yes.

Q. And suppose that Belmont, instead of being closed, were to be sold to a new owner, would that mean that all that money you poured into Pueblo Bowl-O-Mat would have been to no avail?

A. Not if we received damages for the period of years

[933]

that Belmont was competing unfairly against us.

Q. From the standpoint of the ability of Pueblo Bowl-O-Mat to make a profit, would its position be improved in any way if it were sold to and operated by someone other than Brunswick?

A. Belmont?

Q. Belmont.

A. Oh, yes.

Q. In what way?

A. As far as we are concerned?

Q. Yes.

A. Yes, I think if an independent proprietor owned Belmont, he would probably raise the price a bit. Of all

the municipalities throughout the country in which we now operate our price per line has been the lowest in Pueblo. It has been primarily because of the competition provided by Belmont. There is very, very active competition between our center and theirs for leagues.

And I think an independent proprietor would probably take a better look and increase his price, and we could increase our price.

That's some of the additional—of course, the A-2 is already in there. So I guess the new proprietor wouldn't take those out, of course.

Q. You mentioned, I believe, that Pueblo is an

[934]

"early to bed" town. What does that mean, in terms of the hours during which league play can be generated there?

A. It is much more difficult, particularly with the other bowling facilities that there are, it is much more difficult to persuade bowlers to come in on the second shift.

Q. What time does the second shift begin?

A. 9:00 o'clock.

Q. At the present time what per cent booked up is your first shift with leagues?

A. Almost 100 per cent.

Q. And about how extensively is your second shift booked up?

A. Pretty empty.

Q. About how many additional leagues could you accommodate in the second shift?

A. Oh, gosh! Probably 90 per cent more than we have. I just would say offhand that our second shift is perhaps booked 10 per cent of its capacity.

Q. So you wouldn't even think of having a third shift?
A. No. Oh, no.
Q. In Pueblo.
A. No, we would be delighted to have two shifts.

The Court: What do you call it, an early to

[935]

bed town?

The Witness: Yes, sir. It's a mill town and people generally get up a little earlier, so they go to bed early.

The Court: Is Paramu[illegible]e to bed?

The Witness: Yes, sir. Actually, sir, in Paramus over the years it has been more difficult to fill the first shift than the second shift.

By Mr. Seeley:

Q. If Belmont Lanes were closed, what percentage would Pueblo Bowl-O-Mat have of the bowling facilities still in operation?

A. Well, we have 40 lanes. Bowlero has 32, Payne has 12 and Park has 10. We would have 40 out of 94.

Q. A little short of 50 per cent, 45 maybe?

A. Yes, just about.

Q. Would you consider, in having 45 per cent of the bowling facilities in Pueblo, that it would give you any power to exclude others from competing there?

A. No.

Q. Would you consider that it would give you any power to determine the prices to be charged for bowling by others there?

A. No, sir; it would determine price in our center. That would be all.

[936]

Q. Just yours?

A. Just ours.

Q. Going back to the time when Belmont Lanes was opened, you first heard about that in about December of '60, was it, '61?

A. No, it was May or June of 1961.

Q. Was it at that time that Brunswick said that we have no intention of putting one in until at least next spring?

A. No, they never qualified it. Jack Thomas and Milt Rudo came to our office in Paterson. I pulled out then the profit and loss figures, and the lineage figures that we had for the nine months of that year. We talked about the significant loss——

Mr. Seeley: Excuse me. Your Honor, I think it has gone far beyond responsiveness.

The Court: Repeat the question and the answer.

(Record read as follows:

"Question: Was it at that time that Brunswick said that we have no intention of putting one in until at least next spring?

"Answer: No, they never qualified it.")

The Court: Period. The rest of the answer will be stricken as not responsive.

[937]

Q. And then when was it after that that you learned that the Belmont center was going ahead, or was going to try to go ahead?

A. I didn't know it was Belmont, sir. I knew that——

Q. A center.

A. A center. It was in November or December of 1961.

Q. Right. And at that time was there any building on what is now the location of Belmont Lanes?

A. No, sir.

Q. Were there builders who had plans for some kind of construction there?

A. I didn't know it at that time.

Q. Well, shortly thereafter did you attend a meeting with representatives of the builder and the banker who was going to finance the affair, and someone representing National Bowling Corporation of Brunswick?

A. There was a meeting. The people you refer to, all those were not present.

Q. Who, of those I mentioned, were not present?

A. I don't recall any banker being at the meeting. Nor do I recall anyone from National Bowling Corporation. I remember a gentleman from Pueblo, who was in the chain and fence business, who was supposed to be the money man behind it. And Bill Blanks was at that meeting, and a young man, a young Tony Bonforte.

[938]

Q. Who is he?

A. He was the son of a building contractor in Pueblo.

Q. And what was your purpose in being present at that meeting?

A. The purpose of the meeting was to try to make interested people in Pueblo aware of the losses that we were already sustaining in our operation; the losses being sustained by the other proprietors in Pueblo, who previously gave the figures to me, so that we might discourage Brunswick from supplying this new installation.

Q. Weren't you also trying to discourage the builders from going ahead?

A. Yes, of course.

Q. And did they listen to what you had to say about bad bowling conditions in Pueblo?

A. The building went up.

Q. Pardon?

A. The building went up.

The Court: They might have listened, but nothing happened, except that the building went up.

Q. You were allowed to tell your story. That's what I mean.

A. Yes.

Q. And in the process of that, did you say

[939]

anything about the survey that Brunswick had made in connection with the proposed new center?

A. I remember I told them I had a letter from AMF, and in AMF's opinion Pueblo could not support another bowling center.

Mr. Seeley: I move to strike that.

The Court: Repeat the question, please.

(Question read as follows:

"Question: And in the process of that, did you say anything about the survey that Brunswick had made in connection with the proposed new center?")

[940]

The Court: So ordered. It will be stricken.

The Witness: Yes.

Q. Did Mr. Blanks say at that meeting that Brunswick agreed to sell the equipment for the new center, but that

if the developers wanted to drop it they would cancel the contract?

A. No.

Q. What, if anything, did he say that you remember?

A. He was very embarrassed for the position that he was in and I was in.

Mr. Seeley: I move to strike that.

The Court: So ordered.

If you don't remember anything, you just say you don't remember.

The Witness: Oh, I remember, sir.

The Court: What?

The Witness: I want to be fair to Bill.

The Court: Who is Bill?

The Witness: Bill Blanks.

He apologized for the position Mr. Milton Rudo had taken and was taking with this new installation in Pueblo.

In his opinion the other lanes should not have gone into Pueblo.

[941]

By Mr. Seeley:

Q. Well, they hadn't yet gone in, had they?

A. No. They shouldn't go in.

Q. Now, then, following that meeting the developers nevertheless did go ahead and build the building, did they not?

A. Yes.

Q. With a provision in it for a bowling center?

A. Yes.

Q. And AMF had told you that it would not supply the bowling equipment, right?

A. They sent me such a letter.

Q. And if Brunswick at your request had said that it would not supply the bowling equipment, wouldn't that mean that the developers would be unable to have a bowling center there?

A. There were some other smaller equipment manufacturers in the country, there was a Bar-Chris, there was another smaller company from Trenton, New Jersey, that supplied lanes, and there was another company in Boston that supplied automatic pinsetters.

Q. Did you ever ask any of them not to supply pinsetters to someone?

A. No.

Q. Why?

[942]

A. Well, they were having financial problems of their own.

I don't think they would have selected the Pueblo market.

Q. Wasn't it your feeling that if you could get both AMF and Brunswick to say that they wouldn't supply pins to somebody, that that somebody had a pretty slim chance of opening up a bowling center?

A. Pinsetters?

Q. Yes.

A. Yes, I'd say that's a fair statement in that area, in Pueblo.

• • •

[943]

Q. Under existing conditions in Pueblo, in your opinion could you get more first shift league business if you had room for it?

A. No.

Q. So that the preference for the first shift insofar as it is now distributed is about what the capacity of your house is; is that right?

A. Yes.

Q. Now, do you know anything about whether the fullness of the first shift and the relative vacancy of second shift in the other centers there is approximately the same condition as you have?

A. Pretty generally, I think that Belmont Lanes has just a little more second shift bowling than we have, but basically, most all of the centers in Pueblo are fully booked on the first shift.

Q. Do you think that if there were additional business which wanted to—which was accustomed to bowling the first shift, that there would be any resistance to try to convert them to the second shift?

A. It depends on how interested they are in continuing to bowl.

[944]

I don't think so, Mr. Seeley, I think if Belmont closed down all but about 10 percent of the bowlers there would find themselves in our center one way or another, or in Bowlero Lanes, or in Park Lanes, or in Payne's Lanes.

• • •

[1017]

Q. In answer to a question by the Court, which I believe was—had to do with Brunswick's cost of its bowling equipment—

The Court: Cobian, Star—

Q. I understood you to reply to the Court that Brunswick got its cost out of the down payment; was that correct?

A. No.

Q. You didn't mean to say that—I mean, excuse me—you did not say that?

A. No.

Q. The down payment under its standard form of contract was $500, was it not?

A. Correct.

Q. You don't mean to say that that was the total cost to Brunswick of the pinsetter?

A. No.

Q. All right.

By the way, the purchase price was $8100 was it not?

A. Yes.

Q. Approximately.

[1018]

And the down payment was $500. That was about a down payment of about six percent, wasn't it?

A. Of cost, or selling price?

Q. Selling price.

A. Yes.

• • •

Q. Mr. Lieblich, I call your attention to a chart which is on an easel at the side of the jury box marked Plaintiff's Exhibit 1.

The Court: P-1.

Mr. Seeley: And I do that for the record. I know that you can see it.

Is that a chart, the purpose of which is to lay in part a foundation for a comparison between a bowling center operated by BCO and a bowling center operated by a proprietor who had

[1019]

purchased his equipment from Brunswick Corporation?

The Witness: Yes.

Q. At the time of PX-1 there is shown, is there not, the basic elements of Brunswick standard forms of lane and pinsetter sale contracts; that is to say, it shows for the pinsetters the price is $8100, the down payment was $500, totalling $7600, the interest factor was 23 percent, amount to $1,748, spread over eight years; is that right?

A. Yes.

Q. Which divided by eight makes $218 of interest per year?

A. Yes.

Q. And likewise, on the lane contract it is shown that the purchase price was $4500, the down payment was 20 percent, or $900, leaving a balance of 36, that the interest factor was 14 and a quarter percent over five years, which amounts to $513, divided by five is $102 per year; is that right?

A. Yes.

Q. All right. Now, is it true that those percentages shown as interest factors represent a calculation as to what six percent interest would be over the period?

A. Yes.

[1020]

Q. And the actual times, the actual years in which any purchaser of Brunswick equipment would be paying that interest under the contract would depend, would it not, upon the year when he purchased his equipment?

A. Or if he subsequently became delinquent.

Q. Well, this chart assumes that he made his payments, does it not?

A. Yes.

Q. And, therefore, if, for instance, a hypothetical Brunswick customer had purchased his equipment in 1960, is it true that by 1965 he would have—in 1965 he would complete his payments of interest on the lanes, and for the next three years he would have his payments of interest on the pinsetter, and at that time he would be finished?

A. Yes.

Q. Now, is it true that the various plaintiff companies here are operating equipment which was purchased from Brunswick new on various days from 1955 through 1961—pardon me, 1951 through 1961?

A. Yes, that's correct.

Q. Do you know from your general knowledge of the industry what period of time, in what period of time were the peak sales of bowling equipment for new

[1021]

installations?

A. 1960, 1961, 1962.

Q. And by 1965 that was a pretty dead business, wasn't it?

A. Yes, very dead.

Q. Next, I would like to call your attention to the items under the word, "depreciation."

No, take that back, strike it.

It is true, is it not, that in the standard forms of Brunswick equipment contracts, that after the down payment was taken off the remaining principal amount owed and the interest or finance charge were added together, and then that was divided into equal monthly payments that stretched throughout the period of the contract?

A. Yes.

Q. And each of those payments combined, did it not, some principal payment and some interest payment?

A. Yes.

Q. Did you ever have occasion to observe from statements of account which your companies received from Brunswick how the payments were divided between interest and principal when they were credited to the payer on Brunswick's books?

[1022]

A. Yes, I think so.

Q. Was that done by taking from each payment first the amount of interest earned up to the time of the payment and then devoting the rest of the payment to reducing the principal amount?

A. Yes, I think their books reflected interest on the unpaid balance.

Q. Yes. So that as these payments were made, assuming that they were made, would it be true that because each monthly principal was somewhat reduced, that out of each payment the amount taken for interest would be a little less, and the amount applied to principal would be a little more?

A. That is a normal amortization arrangement.

Q. That's what is called interest on a declining balance, is it not?

A. Yes, or interest on the unpaid balance.

Q. So would it not be true that as to the pinsetter contract, for example, that the interest collected would be not a level $218 a year, but a figure which started with the first payment higher than that, and gradually decreased until at the end of the period it was a small amount?

A. No.

Q. Why not?

[1023]

A. One, as a matter of bookkeeping, this exhibit is concerned with the amount of cash needed over the five or eight years to pay the debt.

You asked me before did Brunswick have this in equal payments, adding principal and interest together and then dividing by five, and dividing by eight, and I said yes.

Q. You perhaps are anticipating me a little.

I am going to get to the cash need at the bottom of the chart presently.

I am only talking about interest at the moment.

A. My answer was only relating to interest.

Q. I thought your answer related to the amount required each month to pay on principal and interest.

A. But interest is an integral part of that monthly payment.

Q. Yes, I think we agree on that, I hope so.

Now, going to depreciation, will you tell us a little more, if you can, about the investigation which you said that you and your accounting firm made to find out what useful life is used by other bowling companies in depreciating their bowling equipment?

A. Yes. Prior to the years that we had been a public company, and I organized these bowling centers

[1024]

on behalf of my family and my friends and my clients, most of whom were fairly well to do, they were concerned, as many investors are, with the highest possible amount of depreciation.

This is a way to save tax money.

Q. Right.

A. The same rules don't apply to a public corporation as they do to a private investor.

Q. I see.

A. Consequently, after National Bowl-O-Mat became a public corporation I was concerned that we were taking too much of a deduction for depreciation on our books, and we had continued the same rate of depreciation as had been in the hands of our private investors.

So after consultation with our accounting firm, Lybrand, Ross Bros. & Montgomery, we determined to evaluate what a proper rate of depreciation should be for a public corporation.

[1025]

Q. Yes, sir.

A. In order to assist Lybrand, Ross Bros. & Montgomery I wrote in 1961, or early '62, to the president of every one of the public companies whom I knew to ask them what rate of depreciation they were taking and how they arrived at their situation. Answers varied, depending if they had Brunswick equipment or AMF equipment.

After we received all these replies, and Lybrand, Ross Bros. & Montgomery undertook themselves an inquiry, since they had to certify our report, not only to our stockholders but to the Securities and Exchange Commission, we determined that a fair and conservative rate of depreciation which would be proper for our stockholders, proper for the public and proper for the purpose of the Securities and Exchange Commission, would be a composite of 15 years on all of our equipment.

Q. Thank you.

What was the method of depreciation which you and your family and associates, as private investors, had been using prior to that time?

A. I think it was ten years on the pinsetters and 12 years on the lanes.

Q. Straight line?

A. For bookkeeping purposes, yes.

Q. For tax purposes, different?

[1026]

A. Probably double declining.

Q. Sir?

A. Probably double declining.

Q. Double declining. That is a permissible method, is it not, whereby, in effect, the owner assumes that the property depreciates more rapidly at the beginning than it does as it approaches the end of its useful life?

A. It was a method permitted by the Internal Revenue Service to encourage the acquisition of capital items. The government granted an accelerated rate of depreciation on certain items of equipment.

Q. And it is a method which a bowling proprietor could use for his own bookkeeping, if he wished, could he not?

A. Oh, yes.

Q. Without attempting to recall each and every response which you got from the public companies to which you wrote, could you please indicate the various methods of depreciation which were represented by the answers which you received?

A. I really can't remember now, Mr. Seeley, all the replies that we had. But taking them all into consideration, it seems that some were already more or less taken at 15 years. But the 15 years that we and Lybrand

[1027]

determined was appropriate was just about what all these replies seemed to suggest together.

Q. Did any of them say they were taking longer than 15 years?

A. Yes.

Q. Did any of them say they were using the double declining balance method of depreciation?

A. No, I don't think any would have said that.

Q. You spoke of public companies and private investors, sir. Approximately how many bowling centers are there in the United States?

A. I think about nine or ten thousand.

Q. And how many of those bowling centers are operated by public companies?

A. Well, in those days there were more. Quite a few of the chains have gone bankrupt. In those days I think there were about—perhaps 20 to 25 public companies. That may be on the high side, but in that general area.

Q. What would you guess would be the average number of centers that they owned?

A. Well, if we took 25, then I would say 10 or 12.

Q. Thank you.

Now, at the bottom of the chart, cash need—I think you have already said that, but I will repeat it

[1028]

—that represents, does it not, the amount of money each year which the hypothetical Brunswick customer, under these contract terms, would have to pay Brunswick to cover both his principal and his interest payments on the equipment?

A. Yes.

Mr. Seeley: Yes. Now, may I have Exhibit 1A, please.

(Plaintiff's Exhibit 1A exposed on board.)

Q. We are now looking at Plaintiff's Exhibit 1A, are we not, sir?

A. Yes.

Q. And starting at top of the exhibit, under the words "Brunswick's Customers," we see first "Depreciation."

That is the same as we just talked about on Plaintiff's Exhibit 1, is it not?

A. Yes.

Q. And then interest, that also is the same as on Plaintiff's Exhibit 1, is it not?

A. Yes.

Q. Then we come, at the bottom of the page, to "Brunswick BCOD Centers." And we see "Depreciation, $500 per year." That, I understand, you took directly from Brunswick's own records as supplied to you, is that correct?

[1029]

A. Yes. They averaged about $485, so we made it $500.

Q. All right. The depreciation shown under "Brunswick's Customers" is depreciation on equipment acquired when it was new, is it not?

A. Yes.

Q. Do you know whether or not Brunswick in its BCOD centers uses new equipment or used equipment?

A. It was the equipment that was repossessed from the former owners.

Q. Were you acquainted at all with the market for used pinsetters and lanes in 1965 and '66?

A. Yes.

Q. They are advertised by people other than Brunswick and other than AMF, aren't they?

A. Yes.

Q. Do you have any recollection of what the range of market prices was for used pinsetters in 1965?

A. No, I don't offhand. It was less than the price we had paid, certainly.

Q. At any rate, a party acquiring used bowling equipment would not be permitted to take the same amount of depreciation as if it were brand new, would he?

A. No.

Q. Depreciation is something which, however you spread it, it starts out with the value of a piece of

[1030]

equipment when it is acquired, and when you get all through it is down to zeros, or practically zero?

A. My answer wasn't necessarily correct. Really, the purchaser really could continue to take about the same depreciation, if he desired it, because he could take the same theoretical life of 15 years that we had used, and if the equipment was then five years old he could have continued for another ten years. If my arithmetic would be right, I think it would be the same thousand dollars a year for the next ten years.

Q. But am I not correct that, however you do it, the taking of depreciation is something which should start at the value of the equipment when you acquire it and eventually, when you get to the end of the line, you are at zero, is that right?

A. Yes.

Q. So that in theory it means it no longer has any value; it may, in fact, still be useful, but you have written it off as if its useful life were over.

A. Yes, for bookkeeping purposes. Yes.

Q. Right.

And the next line is interest charged by Brunswick. Does that mean that you have learned from the Brunswick documents shown to you that Brunswick Corporation does not charge its BCOD centers any interest?

[1031]

A. From the documents and from the testimony of Brunswick executives.

Q. I don't intend to dispute that. It is correct that they do not.

Now, that is a different thing, is it not, than the question of whether Brunswick is required to pay interest to others?

A. It is concerned only with the facts and figures of the BCOD centers.

Q. And they are different, are they not, from the question of whether or not Brunswick owes interest to others?

A. Brunswick Corporation?

Q. Yes, sir.

A. Yes.

[1032]

Q. Do you know whether or not the Bowling Centers Operating Division is a separate company from Brunswick or part of the same thing?

A. It is a division of Brunswick.

Q. A division. The same corporation.

A. Yes, it is a division of Brunswick Corporation.

• • •

Q. Do you have a copy of Plaintiff's Exhibit 47, Mr. Lieblich, before you?

A. Yes.

Q. That is entitled, is it not, Analysis of Profit or Loss of BCOD centers?

A. Yes.

[1033]

Q. And down the left-hand column are listed by name all of the BCOD centers, and they have numbers, also, right?

A. Yes.

Q. And the next column shows the location of each?

A. Yes.

Q. And then the number of lanes?

A. Yes.

• • •

Q. Opposite the name of each bowling center are two lines of figures under columns headed 1965, '66, '67, '68, up through 1972, is that correct, sir?

A. Yes, except for 1965.

Q. Yes. And what do the figures in the top line show?

A. The results of the profit or loss of the BCOD center that we took from the profit and loss statement of each of these individual companies.

Q. Right. And is it a fact that those, too,

[1034]

do not include any interest charged to BCOD by Brunswick, nor do they take into account at all any interest which Brunswick Corporation may have paid?

A. That is correct. The records that we examined which you gave us, Mr. Seeley, had no provisions for interest on equipment obligations.

Q. I understand that. What do the figures in the second line opposite each name mean?

A. The figures on the second line show how an independent proprietor would have fared, if he would have made a profit or loss, in that same center, using the Brunswick figures, and adding to it the interest and the depreciation that this proprietor would have shown his profit and loss statement.

Q. Yes. Now, is the interest used in calculating the figures on those second lines the same interest which is shown on Plaintiff's Exhibits 1 and 1A?

A. Yes.

Q. So that is interest, is it not, which would begin at whatever time a Brunswick customer purchases equipment and would run from that time in part for five years and in part for eight years?

A. That is the hypothesis, yes.

Q. Would the figures on the second line be dif-

[1035]

ferent for each of the years 1965 through 1972? Withdraw that.

For each of the years 1967 through 1972, if instead of the interest which a hypothetical Brunswick customer owed Brunswick, they were to reflect the interest which Bowl-O-Mat Companies actually owed Brunswick during those years?

A. The hypothesis is based on six percent interest.

Mr. Seeley: Perhaps you didn't understand my question. May I have it read, please.

The Court: Read it.

(The last question was read.)

A. In 1967 the Bowl-O-Mat Companies already paid Brunswick all the money that was due and owing.

Q. Right.

And so is it correct, at least as far as the Bowl-O-Mat Companies go, the figures on the second line would not reflect the fact that the Bowl-O-Mat Companies were all through paying interest to Brunswick?

A. No, that wouldn't be right, Mr. Seeley. The Bowl-O-Mat Companies would have had a larger loss, since, instead of paying Brunswick, we would have to pay banks, and at sometimes a higher-rate than six percent.

[1036]

If you borrow money to pay off Brunswick, you still have the debt. Instead of paying Brunswick we are paying a bank. And we had to pay a higher interest rate than six percent.

[1037]

Q. The interest shown on Plaintiff's Exhibits 1 and 1A is interest payable to Brunswick under a Brunswick equipment contract, is it not?

A. Yes.

Q. But would you say that for the purpose of reflecting real profit or loss, if there were equivalent interest paid to somebody else, that should be taken into consideration?

A. I would say so.

Q. Thank you.

Now I have Plaintiff's Exhibit 48. Would you have that before you, sir?

(Document handed to the witness.)

Q. Plaintiff's Exhibit 48 is entitled, is it not, Analysis of Cash Flow for BCOD Centers?

A. Yes.

Q. And as we just discussed in connection with Plaintiff's Exhibit 47, there are columns on the left with the numbers, the names, the locations of the various BCOD centers and the number of lanes in each?

A. The same as in 47; yes, sir.

Q. And then across the top of the page there are again columns for the years 1965 through 1972?

A. Yes.

Q. And opposite the name of each BCOD center we

[1038]

find, do we not, two lines of figures running across the page?

A. Except for 1965.

Q. Except for 1965?

A. Yes.

Q. And what was the source of the figures on the top line?

A. The Brunswick profit and loss statements of each of its BCOD houses, which you furnished on subpoena.

Q. Right. The figures on the second line don't actually show any analysis of cash flow for BCOD centers, do they?

A. No.

Q. What do they show?

A. It shows the amount of cash that a hypothetical proprietor would have needed to pay his equipment obligations to Brunswick on the number of lanes and pinsetters in this center that were reflected.

Q. Thank you.

And is it true, again, that although this exhibit shows the hypothetical customer paying—for instance, I will take the first one, Interstate Lanes—$80,000 a year for five years and then $47,000 for the next two years?

A. Yes.

[1039]

Q. Is it not a fact that an actual Brunswick customer would have cash needs depending on the date when he bought his equipment from Brunswick?

A. No. There was no variance from the purchase price that you had set as a standard price.

Q. Well, suppose this hypothetical customer purchased his equipment under the standard terms in 1960. Would he have that $80,000 to pay in 1967?

A. If he had been a successful proprietor, and had been able to make all of his payments to Brunswick, then he wouldn't have been in a BCOD situation.

Q. But does not this exhibit assume the operation of BCOD centers by some hypothetical person other than Brunswick?

A. No, we are talking about Brunswick's operation of BCOD centers and what the independent proprietor would have been faced with had he been operating it.

Q. Right.

A. It has nothing to do with a successful proprietor. These are all ones that went bankrupt or were repossessed by Brunswick.

Q. Do not the figures on the second line opposite each name represent the payments made by a proprietor who made them in accordance with his original purchase contract, as shown on Plaintiff's Exhibit 1?

[1040]

A. It doesn't have anything to do with payments made. It reflects payments that he would have to make.

Q. All right. Do not the figures on the second line reflect the payments which an individual proprietor would have to make to Brunswick had he been operating the BCOD center?

A. Yes.

Q. And if the hypothetical operator of that center was using equipment purchased in 1960, would he have to make $80,000 payment to Brunswick in 1967?

A. If he had been able to pay all of his obligations, no, you are right.

• • •

[1041]

The Court: Before we go any further, I just want to clarify this in my mind. That second line of P-48,

that would mean a distressed operator meeting his depreciation costs, and his interest costs, and amortization of principal, as far as pinsetters and lanes were concerned, he would operate at a deficit as compared to BCOD's operation; isn't that what—

The Witness: Essentially, but not depreciation.

[1042]

The Court: Not depreciation.

The Witness: Right.

The Court: Interest cost and amortization of his timely payment for the pinsetters and the lanes.

The Witness: Yes, sir.

• • •

[1051]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Lieblich, just one or two questions about Exhibit 1A—

The Court: Mr. McNeill, may I suggest that you take the map away? Are you going to use it again, Mr. Seeley?

Mr. Seeley: We will not use it again.

The Court: Just to get it out of the way.

Mr. Seeley: Yes, we should.

[1052]

By Mr. Hoffmann:

Q. Just to make this clear, Mr. Lieblich, you have indicated here interest charged by Brunswick, on the bottom, on the BCOD centers, is that right?

A. Yes.

The Court: Referring to what, Mr. Hoffmann?

Mr. Hoffmann: Referring to Exhibit 1A, the bottom part, under the heading, "Brunswick BCOD Centers."

The Court: All right.

Q. And the entry is zero dollars per year, is that right?
A. Yes.
Q. Where did that information come from?
A. From two sources. First, the Brunswick documents themselves; and, secondly, the admissions by the executives of Brunswick Corporation that they don't charge any interest to the BCOD centers.

[1053]

Q. And their own profit and loss sheets do not show any interest charged?
A. That' right.

The Court: Off the record.

(Discussion off the record.)

Q. Now, where on the exhibits, 46, 47 and 48 you show figures in the second line for each center in relation to cash flow for the BCOD centers as they would have been if they had been in the hands of independent proprietors, what are you purporting to show through these exhibits?
A. Well, how much cash the proprietors would have needed to pay the obligations to Brunswick and how much cash there was in the center as Brunswick was operating.
There was often a significant disparity between the two figures.

Q. You are not purporting to show figures which correspond with year in, year out, with the National Bowl-O-Mat figures?
A. No, sir.
Q. And indeed, in 1967 National Bowl-O-Mat had paid off Brunswick entirely, and these figures go on until 1972, do they not?
A. That's right.

Mr. Hoffmann: That's all.

• • •

[1082]

C. VITOLO.

DIRECT EXAMINATION.

The Court: Members of the jury, listen to Mr. Hoffmann for a second, please.

Mr. Hoffmann: Lady and gentleman of the jury, at a previous hearing in this case a witness named Vitolo testified. He is presently unavailable and outside the powers of the court—the court here.

[1083]

He lives in the State of Florida. And that is the reason why he cannot be subpoenaed or presented to you.
So in place of that, with the Court's leave, we are reading the testimony of Mr. Vitolo.

The Court: Proceed, please.

Mr. Hoffmann: One of my colleagues will act as the lawyer and another as the witness.

(Testimony read with Mr. Zucker reading the questions and Mr. Agee making the responses, as follows:)

"Question: Mr. Vitolo, can you tell us your home address, please?

"Answer: 290 Bay Drive, Massepequa, New York.

"Question: Are you appearing here today under the force of a subpoena?

"Answer: I am.

"Question: I show you this subpoena and ask you if this is the subpoena, the form of subpoena that was served upon you?

"Answer: It is.

"Question: Mr. Vitolo, did there come a time in 1965 when you were in this courthouse in Newark on the occasion of the bankruptcy sale of the American International Bowling Corporation?

[1084]

"Answer: Yes, sir.

"Question: Could you tell us approximately when that was?

"Answer: It was either March or April of 1965.

"Question: If I were to tell you that the date was March 2, 1965, would that strike you as approximately the exact date?

"Answer: Approximately, yes, sir.

"Question: Mr. Vitolo, did this bankruptcy sale take place in a courtroom, this courtroom or a courtroom similar to this?

"Answer: Similar to this. I don't know if it was this courtroom.

"Question: And can you tell me approximately how full the courtroom was as of the A. I. B. C. bankruptcy sale?

"Answer: I would say it was anywhere from half to three-quarters full.

"Question: Can you tell us who besides yourself was at the sale that you might have recognized on that day?

"Answer: Well, I drove down with three other gentlemen, a Mr. Ohshan, a Mr. Bloodstein and a Mr. Brown. There were several other people here

[1085]

when we arrived, which we chatted with.

"Question: Can you identify any of the others who were in the courtroom to the best of your recollection?

"Answer: Not at this time. I can't remember their names.

"Question: Do you remember whether Mr. Sidney Friedberg was at the sale?

"Answer: Yes, I am pretty sure he was at the sale.

"Question: Do you know the name of the chain headed by Mr. Friedberg?

"Fairlanes, I believe it is called.

"Question: And was Mr. Friedberg an active bidder at the bankruptcy sale, if you recall?

"Answer: I believe he was.

"Question: Mr. Vitolo, do you know the relative sizes of the chains of Fairlanes and also A. I. B. C. in the bowling center industry as of this time in 1965?

"Answer: I believe they were comparable. They were about the two largest chains that I know of.

"Question: Did there come a time during the bankruptcy sale that you participated in the

[1086]

bidding, sir?

"Answer: Yes, I did.

"Question: Can you tell us about that?

"Answer: Yes, there were many establishments bidded off by a court officer of some kind, and in most cases the bids would start out and somebody would bid on Bobby Brown, who will bid on one establishment, and Brunswick would outbid him, and mostly every establishment was bid off that way. Brunswick outbidded all of them except the one I bid on. I was the successful bidder on the one I bid on, and the only successful bidder.

"Question: Could you tell us the name and location of this center?

"Answer: This center was known as Sunset Lanes in Deerpark, Long Island.

"Question: Do you recall where the bidding started and what price you bid ultimately to get this house?

"Answer: I believe the bids started at $10,000 and Brunswick would go to $11,000, $12,000, $13,000,

$14,000, $15,000. They reached $17,000. I bid $18,000 and then the bids stopped and the Referee, whoever was in charge, told me I was the successful bidder and I would have to put up a

[1087]

certified check for all the money, at which time he would turn over the corporate books to me of the corporation I purchased, and he would telephone the manager at the Sunset Lanes advising him that I was taking over as of that evening at 6:00 p.m.

"I gave him a certified check in full, and they did call the establishment, and he did turn over the books to me, the corporate books, that is, and when I went down there they were expecting me, and I was running the establishment.

"Question: Could you tell us what happened thereafter, Mr. Vitolo?

"Answer: Approximately three or possibly four days later I received a registered letter from the Brunswick Corporation saying that there was an indebtedness of $200,000 on this establishment, and I would have to come up with it, so after receiving that letter I called up a Mr. Bernie Rudo.

"Question: What was your understanding of Mr. Rudo's position as of that time?

"Answer: My understanding of Mr. Rudo's position was that he was in charge of running A. I. B. C. at the time and prior to that.

"Question: And did you understand that he had any function with respect to the Brunswick Cor-

[1088]

poration?

"Answer: At the time, no, he was liaison. I know that he was liaison for Brunswick Corporation. I don't know what function he had, no.

"Question: What did you tell Mr. Rudo?

"Answer: I asked him what the score was on this here, that I had received, and he told me that somehow Brunswick slipped up and down and they intended to buy all the houses, and they didn't know how I got that one, and they would give me a profit to take it back.

"Question: Do you recall whether you or Mr. Rudo suggested the amount of profit?

"Answer: I believe it was Mr. Rudo suggested he would give me $5,000 above my purchase price and I could keep that week's receipts to get out.

"Question: And what did you say, Mr. Vitolo?

"Answer: Well, with that $200,000 staring me in the face, I accepted it.

"Question: Could you tell us what happened thereafter?

"Answer: I got a hold of an attorney at the time, Mr. Olshan, who contacted Brunswick, and they made all the necessary papers and releases, and it was done very, very quickly, within two or three

[1089]

days I had my money and Brunswick had the place back.

"Question: And, to summarize your testimony, is it fair to state that from the time you bid at the sale until the time that Brunswick acquired the center—"

The Court: Reacquired.

Mr. Zucker: It should have been "acquired."

Mr. Hoffmann: Would you read on?

The Court: Mine says "reacquired." Yours says "acquired."

I am not making an objection, I am correcting you. Forget it.

Mr. Hoffman: Following down the page—Why don't you read the whole thing?

Mr. Zucker: It's later corrected to "acquired."

The Court: "And, to sumarize your testimony"—

Mr. Zucker: "And, to summarize your testimony, is it fair to state that from the time you bid at the sale until the time that Brunswick acquired the center no more than a week elapsed?

"Answer: I'm sorry. I don't know the question.

"Question: And, to summarize your testimony, is it fair to state that from the time you bid at

[1090]

the sale until the time that Brunswick acquired the center no more than a week elapsed?

"Answer: Approximately a week, yes, sir.

[1091]

"Question: Mr. Vitolo, are you familiar with Viking Lanes?

"Answer: Yes, I am.

"Question: Could you tell us what they are?

"Answer: It was a forty-lane establishment directly across the street—diagonally across the street from Sunset Lanes. I would say less than a thousand feet away.

"Question: As of March of 1965, did you have any knowledge either way as to whether Viking would or would not close within a few months?

"Answer: No, sir, I did not.

[1092]

"Question: Mr. Vitolo, to your knowledge, did Viking Lanes continue to operate from March of 1965 to the present time?

"Answer: To the present time, no, sir.

"Question: Do you have any knowledge as to when Viking ceased to go out of operation?

"Answer: I believe it was about three months after the date I took over Sunset Lanes, which was March of 1965.

"Question: Do you know what kind of equipment, what kind of pinspotters or pinsetters Viking Lanes had?

"Answer: Viking Lanes was an A.M.F. house, A.M.F. automatics and A.M.F. bowling lanes."

Mr. Zucker: Your Honor, I think that's all.

Mr. Seeley: May Mr. Agee continue to impersonate the witness:

The Court: We will do it completely. Stay there, Mr. Agee.

Mr. McNeill: As was done previously, ladies and gentlemen of the jury, I will also be reading from the transcript from the prior questions.

[1093]

"Cross Examination by Mr. McNeill:

"Question: My name is McNeill and I am one of the attorneys for the Brunswick Corporation. You testified that you were here in the Federal Courthouse in March of 1965 and purchased Sunset Lanes at the bankruptcy sale, isn't that correct?

"Answer: That is correct, sir.

"Question: You purchased Sunset Lanes having full knowledge that Sunset had an outstanding past due obligation to Brunswick in excess of two hundred thousand dollars, didn't you?

"Answer: No, sir.

"Question: Did you have a lawyer here present with you on that day when you purchased the stock of Sunset?

"Answer: No, sir.

"Question: Was Mr. Olshan with you?

"Answer: Yes, sir.

"Question: Was he your attorney?

"Answer: Not at the sale, no.

"Question: How about Mr. Theodore Shrier?

"Answer: No, sir.

"Question: Was he present at that day with you?

"Answer: I don't recall.

[1094]

"Question: Was Mr. Shrier your attorney in March of 1965?

"Answer: Possibly.

"Question: Who is Mr. Theodore Shrier?

"Answer: Mr. Theodore Shrier represented—he's an attorney from a firm known as Simpson-Freeman. He represented Barchris Corporation and he represented myself and two of the gentlemen in some litigation past.

"Question: Mr. Vitolo, are you ever referred to as Elba Vitolo?

"Answer: No, sir.

"Question: Is there a person named Elba Vitolo, as far as you know?

"Answer: No, sir. Elda.

"Question: Who is Elda?

"Answer: My wife.

"Question: Was she here with you on March 26, 1965 at the bankruptcy sale?

"Answer: No, sir.

"Question: Did she have an attorney representing her as far as you can recall at the bankruptcy sale?

"Answer: She definitely did not.

"Question: Mr. Vitolo, do you recall a

[1095]

gentleman named John Monigan, an attorney for Brunswick Corporation from the law firm of Stryker, Tams & Dill being present at the bankruptcy sale proceedings?

"Answer: I can't say that I do, no.

"Question: Do you remember there being some attorney present for Brunswick Corporation?

"Answer: I remember some people representing Brunswick. Whether they were attorneys or not, I wouldn't know.

"Question: You recall the Brunswick representative, one of them, making a statement to all persons present at the bankruptcy sale that there were outstanding debts past due on the part of the various corporations, including Sunset, on March 26, 1965?

"Answer: Some gentleman stated that there were, you are buying the corporation as is and there were debts. None of the amounts were ever stated, no.

"Question: All of the books and records showing, or an accounting—strike that. Let me rephrase my question.

"Financial statements as to Sunset Lanes were available to you at or prior to the sale,

[1096]

isn't that correct?

"Answer: No, sir.

"Question: Did you ever request to see such financial statements?

"Answer: No, I don't recall if I requested it. I can't recall that.

"Question: Did Mr. Shrier on your behalf ask to see the financial statements as to Sunset Lanes?

"Answer: No, but somebody in the group requested it. But they were not available.

"Question: Did you request it of the referee in bankruptcy who had such financial statements?

"Answer: That's whom they requested it from, yes, but there were none available.

"Question: When was this request made, can you recall?

"Answer: I believe it was the day of the auction.

"Question: The bankruptcy proceedings had begun some time the prior year in 1964, had they not?

"Answer: I don't know.

"Question: When did you first become aware

[1097]

that this bankruptcy sale was going to take place, sometime prior to March 26th of 1965?

"Answer: Yes. Mr. Olshan and Mr. Brown advised me of the sale and I should ride out here with them. Other than that I didn't know about it.

"Question: And was that a couple of days, a week or month?

"Answer: I would say about two or three weeks prior to the sale.

"Question: And you took no steps between that point in time when you first heard about this bankruptcy sale and coming over here to ascertain what the financial condition was of Sunset Lanes, is that your testimony?

"Answer: I inquired about it from Mr. Olshan at the time. He didn't have any information to give me because there was none available to him. That's about the extent of my inquiry.

"Question: And yet you bid eighteen thousand dollars for this company at the bankruptcy sale not having seen any books and records?

"Answer: I knew the establishment. That's correct, your answer to your question is correct.

"Question: Without knowing what the outstanding indebtedness was to Brunswick Corporation?

[1098]

"Answer: That is correct.

"Question: And without knowing the extent of the past due delinquent payments to Brunswick?

"Answer: That is correct.

"Question: You bid the eighteen thousand dollars nevertheless?

"Answer: Yes.

"Question: Would it refresh your recollection if I read a portion of the transcript from the proceedings at the bankruptcy sale quoting John Monigan, Brunswick's attorney, concerning Brunswick's position as to the need to require payment for the outstanding obligations from the various bowling center companies that were being sold that day?

"Answer: I don't believe it would, no.

"Question: You don't deny that the Brunswick representative said flatly that Brunswick intended any purchaser of any of the bankrupt houses sold at this bankruptcy sale to make good on the outstanding defaulted obligations?

"Answer: Yes. I knew what the obligations were, yes.

"Question: Was your testimony that within a very short period of time after you were the successful purchaser for the Sunset bowling center—

[1099]

let me interrupt that question and withdraw it, and ask you this: What you purchased was the stock in the corporation that owned the assets of Sunset, isn't that correct?

"Answer: That is correct.

"Question: So you owned the company after the gavel fell and you paid your $18,000, isn't that correct?

"Answer: That is correct.

"Question: And within a short period of time you testified that you received notification from Brunswick that they wanted to be paid the amounts then due and owing by that corporation to them, isn't that correct?

"Answer: They sure did.

"Question: And your testimony, I believe, was that you didn't have—let me ask you that question—

did you have the money? Did you make plans to make those payments due Brunswick?

"Answer: Over $200,000, no, sir.

"Question: So instead you chose to sell the corporation to Brunswick, isn't that correct?

"Answer: Yes, which I sold to Brunswick. They offered to buy and I sold it to them.

[1100]

"Question: You mentioned a figure of $5,000 profit. That never occurred, did it? You sold the center, this bowling center company to Brunswick for $20,000, isn't that correct?

"Answer: I remember $5,000 profit on the transaction.

"Question: Do you recall the monies paid to you by Brunswick for that corporation?

"Answer: Yes. They were paid.

"Question: How much?

"Answer: My $18,000 back and when it was all over I had about $5,000 profit.

"Question: You were paid $20,000?

"Answer: Plus the week's receipts.

"Question: Which netted you a $5,000 profit?

"Answer: I would say so, yes, about.

"Question: You made $3,000 in one week on the company?

"Answer: I didn't have any obligations to pay, any debts, payroll, or anything like that.

"Question: You left the company without having paid for the payroll for that week?

"Answer: With full knowledge of Brunswick, yes.

"Question: Mr. Vitolo, in connection with

[1101]

the bankruptcy sale of other bowling center companies you indicated that there was bidding by others. Did you bid as to any other bowling center?

"Answer: No, sir.

"Question: Do you have any knowledge today—can you recall the exact amounts of any bids made by any company for any of these bowling centers?

"Answer: The exact amounts, no, sir."

WILLIAM EDMUND KENNEY, residing at 27965 Johnson, Grosse Ile, Michigan, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Are you employed?

A. Yes.

Q. What is the nature of your employment?

A. I am regional manager for the Treadway Companies.

Q. What are your functions as regional manager for the Treadway Companies?

A. To supervise several centers in the Midwest area.

Q. How long have you been with the Treadway Companies or its predecessor, National Bowl-O-Mat Companies?

[1102]

A. Just a little over 11 years.

Q. When did you start?

A. March 1962.

Q. Now, Mr. Kenney, what was your first employment at Bowl-O-Mat?

A. I was first hired at Skor Lanes in Detroit, Skor Lanes Bowl-O-Mat, in February or March of 1962, I came to work there as a trainee, to—as a manager-trainee.

Q. Who gave you your employment, do you remember?

A. Yes, sir, I do.

I was first introduced by Jack Klausmeyer, who at that time was the regional supervisor in the Midwest area.

And later, as a matter of fact, a couple of days later, Mr. Lieblich came into town and interviewed me further.

At this time he hired me to come to work at the Skor Lanes, and approximately three days later I started my first day's work.

Q. How did you get to work at National Bowl-O-Mat?

A. In very early 1962, I should say the first part of February, I was looking to change my position, and I—a friend suggested that I stop in and talk to Brunswick, and at the time it sounded rather interesting.

[1103]

So I stopped in a regional office which was located in Royal Oak, Michigan, I believe, and I spoke to a gentleman there, I don't recall his name, and he said at that time they had nothing available, but suggested I could talk to National Bowl-O-Mat Company, and gave me Mr. Klausmeyer's name and address, and of course I contacted him right after that.

Q. And then within a short period of time you saw Mr. Lieblich and were hired?

A. Yes.

Q. Where is Skor Lanes?

A. Skor Lanes is located in Taylor, Michigan.

Q. This is where you worked first?

A. Yes.

Q. For how long were you at Skor?

A. I was at Skor Lanes for approximately three and a half months.

Q. Then what did you do next?

A. At that time, sir, I was asked if I would consider going to Pueblo, Colorado, to be the manager of that particular bowling center.

Q. This is after receiving training at Skor?

A. Yes.

Q. And did you accept?

A. I certainly did.

[1104]

Q. And about when did you start in Pueblo?

A. I arrived in Pueblo, it would have been Memorial Day of 1962, sir.

Q. You remember that day?

A. Very well.

Q. Mr. Kenney, what were your functions, duties, as the manager at Pueblo?

A. Well, sir, as the manager of Pueblo, of course you are responsible for the entire operation, that being the bowling, cocktail lounge, snack bar, all income, promoting the business, securing personnel, setting up budgets, work schedules, and certainly taking care of the property that was on hand.

Q. Was this a new center in Pueblo?

A. No, it was not.

Q. Do you know when it was first opened?

A. I believe it was either late August or very early September of 1960.

Q. It was a going concern, so to speak, when you became manager?

A. Yes, sir.

Q. You seem to have a little bit of hesitancy in answering that.

What caused the hesitancy?

[1105]

A. Perhaps I didn't quite understand. It was open for business.

Q. It wasn't doing too well?

A. No, sir.

Q. Now, can you tell us what centers existed in Pueblo, Colorado, in 1962, bowling centers?

A. Yes. Starting with the one closest to us, would be Payne's Lanes, which was a 12-lane AMF center located on a side street, extremely limited parking, I would say limited facilities, and at the time quite old.

The equipment was very old at that time.

Going north or to midtown area would be Bowlero Lanes, which was located in the second or lower level of a large shopping center.

It was a 32-lane AMF split installation. By that I mean 16 lanes on either side——

Q. May I suggest, with the Court's consent, that you pause until the airplane goes by?

A. To repeat, it was the Bowlero Lanes located in midtown shopping center, it was a 32-lane back to back house, as we call it, 16 lanes on either side, with a concourse and facilities located in between.

And then downtown, directly downtown and slightly west, would be a 10-lane AMF center, the name of that was Park Lanes.

[1106]

It was located right on the main street of downtown, just slightly on the fringe of the downtown area, no off-street parking, very limited, very limited facilities, no cocktail lounge, no snack bar.

The only facilities available in the way of food or beverage would be vending machines, and it, too, was quite old, sir.

Q. And the other ones?

A. Belmont Lanes located in what is known as the Belmont area.

Belmont opened in late August or early September of 1962. It was a free-standing building, meaning that it was completely by itself. It was a very attractive building, 24 lanes of Brunswick equipment.

At the time it had a very nice restaurant, most bowling centers have a snack bar, this had a snack bar and restaurant, I might add.

No cocktail lounge at that time.

And I might say it was just a very attractive center, sir.

Q. Now, were there any other places in which a bowler in the Pueblo area could go to bowl other than the ones you just mentioned in your testimony?

A. Not in that area, no, sir.

Q. Was there bowling in any nearby towns, any-

[1107]

thing of that sort?

A. No, sir, there was not.

Q. Geographically speaking what, can you describe how Pueblo is located?

A. Well, sir, if you go from the extreme north side to the extreme south side it would probably take eight to ten minutes.

If you go from the eastern boundary to the western boundary, you would then require about the same amount of time. It is a very small town.

Q. So all these bowling centers were in a tight compass of time?

A. Yes.

Q. Would you put ten minutes as the outer limit from one to the other?

A. Yes, sir.

Q. If you go outside of the town to the north, what have you?

A. Approximately the closest town north would be about 45 miles, Colorado Springs, about 45-minute drive.

Q. What is to the west of Pueblo?

A. To the west would be the mountains. There are no communities, to my knowledge.

Q. No bowling centers on the sides of the mountains?

[1108]

A. No.

Mr. Hoffmann, I have read some literature to the contrary; Rip Van Winkle.

Q. And to the south?

A. I believe the closest city would be Walsenberg, probably over 100 miles.

Q. And that leaves to the east—

A. Yes. To the east, I can't even recall the closest town.

I was there a long time. It is mostly just prairies.

The Court: How far is Denver from Pueblo?

The Witness: 100 miles north.

Q. Now, for how long a period of time did you manage the center, Pueblo Bowl-O-Mat?

A. Just slightly over six years, sir.

Q. Did you have occasion frequently to see the other centers that you mentioned?

A. Yes, sir, I did.

Q. How would you compare the Pueblo Bowl-O-Mat center with the others?

A. Well, I think the best way to describe Pueblo Bowl-O-Mat, I have looked at a lot of bowling centers throughout the country, I think it was second to none.

It was, first of all, a free-standing building,

[1109]

with 40 lovely lanes in a row, with no obstructions in the building, meaning no pillars, no posts, no columns, and starting at the far end of the concourse we had a very lovely nursery that would accommodate a good many youngsters complete with lavatory facilities, juvenile furniture, and the whole bit that would go along with it.

We had a very large meeting room that we used quite often.

We also had a room for all of the lockers where a bowler could store his ball, bag and shoes when he wasn't using it.

We had a very attractive cocktail lounge and a very fine snack bar, and I might add, sir, that at no time were we ever short of parking.

We had a very large parking lot that was very well lighted at night.

Q. After you became manager of Pueblo Bowl-O-Mat did any new centers in the Pueblo area come into existence?

A. Yes, sir. Just prior to my arriving there on Memorial Day, 1962, ground had already been broken for Belmont Lanes to be constructed.

Q. What was the nature of that center; do you know who owned it?

[1110]

A. Yes, sir. It was built by Mr. John Holt.

Q. What sort of equipment did it have?

A. It was a brand new 24-lane Brunswick bowling center.

Q. When you say "Brunswick bowling center," you mean equipped with Brunswick bowling equipment?

A. Yes, all of the bowling equipment, the pinsetters, the lanes and all of the associated equipment was Brunswick.

Q. And when did the Belmont center in Pueblo open for business?

A. I'm sorry?

Q. I'm very sorry. My tongue was slipping away from me.

When did Belmont Pueblo open for business, if you know?

A. It would have been in either late August or very early September of 1962.

Q. Now, sir, based on your experience as general manager of Pueblo Bowl-O-Mat, did you experience competitively any adverse impact from the opening of the Belmont center?

A. Yes, sir, I did.

Q. And what was that?

A. Well, to the best of my knowledge, to the best I

[1111]

can recall, sir, we immediately lost a 24-team league of five members, meaning 120 bowlers, to Belmont Lanes for the '62 season, and as I further recall, I think we lost also a Triplex league, and I believe at that time I believe the Pueblo Water Board had a league that was bowling.

The Court: What is Triplex?

The Witness: They make pistons. It is a corporation, Triplex Corporation.

I think it is a division of Perfect Circle.

The Court: An industrial league?

The Witness: Yes.

Q. Now, there has been some testimony here that this was a "going to bed early" town, Pueblo.

Does that correspond with your knowledge of Pueblo?

A. Yes, sir, I would say, generally speaking.

[1112]

Q. What do you mean by that, going to bed early town?

A. I think the best way to describe it, sir, unlike many towns where if you happen to be out dining late or seeking entertainment late in the evening, you just don't find it in Pueblo, Colorado.

The Court: You mean like Newark?

The Witness: Do I have to answer that, sir?

The Court: No.

Q. In respect of your leagues of bowling at Pueblo bowling center, what was the most common hour at which league bowling started?

A. That would be considered the early shift, which would be 6:45, sir.

Q. And for how long would a league bowl, if it bowled on the early shift starting at 6:45?

A. Are you talking in terms of hours or weeks?

Q. Time.

A. In time it would be approximately two and a half hours, two hours and 15 minutes.

Q. Until about 9:15?

A. Yes, that would be quite accurate.

Q. And then you have a second shift that starts?

[1113]

A. Supposed to, sir, yes.

Q. At 9:15. Is that the time?

A. That would be the time the second shift would start.

Q. Would the second shift take as long as the first shift to bowl?

A. Most times, yes.

Q. That would bring you to when?

A. Approximately 11:15, 11:30.

Q. Now, in terms of the business which Pueblo Bowl-O-Mat had while you were the manager, how did it divide among the shifts, that is to say, the leagues, were the leagues on both shifts?

A. Yes, sir, they were.

Q. The percentage-wise, if you can remember, how great a percentage of your leagues bowled the first shift?

A. Well, I'd say this. The first shift would be filled Monday through Friday 100 percent.

And the second shift would probably be at that time 10 percent or less.

Q. So that if new leagues came to Pueblo Bowl-O-Mat you would have had lanes to accommodate 90 percent of your second shift, is that right?

A. Very definitely, sir.

[1114]

Q. And the town didn't go to bed quite so early that there were no bowlers on the second shift, is that right?

A. That's right.

Q. Now, can you tell us approximately how many leagues you had at Pueblo at any point while you were managing Pueblo?

A. I suppose the maximum number would be somewhere in the 27 to 30 variety.

Q. How many lanes again did Pueblo have?

A. 40 lanes, sir.

Q. The leagues themselves, can you tell us what the base for them was, where did they come from, what elements of the community?

A. Well, sir, outside of a few industrial leagues which I mentioned earlier, most of the leagues are made up of social clubs, churches, mens' clubs, ladies' clubs, schools; just everywhere the people that were put together, and of course, later became friends and what have you.

Q. Addressing yourself, if you will, please, to the opening of Belmont in 1962, do you have any recollection of losing any leagues at Pueblo Bowl-O-Mat following the opening of Belmont?

A. Yes, I do.

[1115]

Q. Do you know whether or not those leagues were lost to Belmont?

A. Yes.

Q. Can you tell us anything more specific about that; do you know the names of any leagues?

A. Well, the one that I know very well, sir, would be the Pueblo Army Depot, known as PAD, was 24 teams with five men on a team, which would be, of course, 120 total bowlers.

[1116]

To the best of my knowledge, we also lost the Triplex league, and, as I mentioned before, a league from the water board.

Q. Do you have any recollection of the size of the Triplex or the water board league?

A. To the best of my knowledge, sir, the Triplex league, I believe, was a 12-team league of five men each. And if I am not mistaken, the water board was eight teams of five members each.

Q. Leagues consist of a number of teams, is that right?

A. That is correct, sir.

Q. You just mentioned one which had eight teams of five men each.

A. Right, sir.

Q. Is there any group of bowlers, individual open bowlers, who are not referred to as leagues, but nonetheless bowl together?

A. Yes, sir; there are. There are a lot of teams and individuals that migrate from one place to another.

Q. What do you mean by a team?

A. A team, depending on the type of league, can be a five-man team, it can be a four-man team, it can be three men and two women, and various ways that it could be arranged. But, generally speaking, it is either a

[1117]

five-man team or a four-man team.

Q. Do you know whether or not any teams, such as you have just described, went over from Pueblo Bowl-O-Mat to Belmont soon after Belmont opened?

A. Well, I know of several, sir, but one specifically, because I was asked to bowl on it.

Q. Did you do that?

A. Yes, sir; I did, for a good reason.

Q. Are you a good bowler?

A. Sir?

Q. For general information, are you a good bowler?

A. At that time, I would say fair.

The Court: Where did you bowl, Belmont?

The Witness: Yes, sir.

Q. Now, sir, did there come a time when the operations of Belmont changed?

A. Yes, sir; there did. It would be during the month of late March or early April of 1965.

Q. And what was the change?

A. Well, at that time, sir, it was common knowledge that the center was in financial problems, and I went over and checked myself. There was an official notice on the door—and, I am sorry, I don't recall exactly what it said—but I think—I don't even recall that

[1118]

it was closed for any specific time, I think it just changed hands from one day to the next, when the Brunswick Corporation took over the management of the Belmont Lanes.

Q. You said there was an official notice on the door. Con you somehow correlate that with the closing of Belmont; did the notice have something to do with the closing of Belmont?

A. Yes. I'm sorry, I have seen the same type of a legal notice before, many times, and I just don't recall exactly what it said. But it was an official type notice posted on the front door. Perhaps they were closed for maybe an afternoon, or a short period of time, because I know I didn't go inside. So apparently it had to be locked up, for one reason or another.

Q. But whatever the notice said, it conveyed to you the information that Belmont was now closed, is that what it said?

A. Yes, sir; it did.

Q. And then did Belmont reopen later on?

A. Yes, sir; it did. I don't recall the exact date, but it did reopen in that same period of time, late March or early April 1965.

Q. Within a matter of weeks, would you say, a few weeks?

[1119]

A. I don't think it was that long, sir. I think it was a matter of days.

Q. And when it did open, under whose management was it, if you know?

A. It was then under the management of the BCOD, Brunswick Corporation.

Q. When Belmont reopened, under the management of BCOD, did you lose any business to it, any bowlers?

A. I'm sorry, sir. When it reopened?

Q. Yes.

A. Not at that particular time. This was April of 1965.

Q. Did you, later on?

A. Yes, sir; we did.

Q. Did Belmont, in its reopened form, maintain the same equipment which it had earlier, under the prior management?

A. There were no significant changes until the following year, sir.

Q. What year was that?

A. That would have been—I remember it specifically. The announcement that appeared in the newspaper would be July of 1966. I believe there was notice made prior to that, but this was official in the paper at that time.

Q. What was it that was announced in the paper?

[1120]

A. They announced that for the bowlers' convenience that they were now going to install a new A-2 conversion.

Q. What is an A-2, Mr. Kenney?

A. Well, an A-2 is a conversion that is put on an A-1 that enables the machine to operate considerably faster than the previous model, return the ball to a customer faster, enabling a team of four or five members to bowl faster than they had previously.

Q. And does the A-2 create a significant advantage, in your opinion, to the bowling center that uses it?

A. Yes, sir; I think the advantages are really twofold, the main advantage being that a league—pressed for time, to get up in the morning and go to work—they can complete their bowling much quicker than they could on the previous machinery. And a good portion of the information that was passed out at time—that with the use of an A-2 conversion you not only bowl faster, but it is the general consensus that you also bowl better when you do bowl faster.

Q. Your score goes up?

A. Yes, sir.

Q. Now, what, in time, would have been—what was the impact of the A-2 on the time consumed by league bowling, say, in the first shift, did it shorten it?

A. I think, sir, it would shorten the first shift—

[1121]

or the second shift, for that matter—approximately 15 minutes, maybe a little more, 17 minutes.

Q. And then the second shift, if there were an A-2 present, could be starting perhaps nearer to 9:00 o'clock than before?

A. That is correct, sir.

Q. Was that of significance in an "early to bed" town?

A. It certainly would be.

Q. In fact, did you find that after Belmont installed A-2's that you lost leagues at Pueblo Bowl-O-Mat?

A. Yes, sir; I did.

[1122]

Q. Now, sir, do you know the price of an A-2 automatic pinsetter machine?

A. Are you speaking of an A-2 conversion?

Q. No, I am speaking now of a new A-2 machine; do you know the price of it?

A. I would assume, with today's standards, it must be $8700 to $9,000.

Q. Do you know what it was, or approximately what it was, at the time when you managed Pueblo Bowl-O-Mat?

A. Well, an A-1 cost $8100, and I assume at that time an A-2 must have been considerably more than that, sir.

Q. Now, did the A-2 conversion of an A-1 accomplish the same thing as a new A-2 machine would accomplish?

A. Yes, sir; it would.

Q. Do you know the price of a conversion kit for converting an A-1 machine into an A-2?

A. I believe it would run in the vicinity of $1,800 to $2,000 per machine.

Q. And would that have been true during the period of time when you managed Pueblo Bowl-O-Mat?

A. Yes, sir; it would.

Q. Now, how many lanes had Pueblo?

A. I'm sorry, I didn't understand you.

Q. How many lanes were there at Pueblo Bowl-O-

[1123]

Mat?

A. 40 lanes, sir.

Q. Can you do the arithmetic and tell us how much it would have cost to convert the A-1 machines at Pueblo Bowl-O-Mat into A-2's by use of the conversion kit?

A. Approximately 75 to 80 thousand dollars, completely installed.

Q. Did you ask Mr. Lieblich, or other officials of National Bowl-O-Mat, to have the center converted into A-2's in order to meet the competition of Belmont?

A. I am sure I did, sir.

Q. And what was the answer?

A. We can't afford it.

Q. Do you know now whether or not in 1966, July—Pardon me. Did I understand your testimony correctly, that Belmont Bowl-O-Mat announced its conversion in July of 1966?

A. It had been announced previously, sir, but it appeared in the newspaper at that time.

Q. Do you know, as of that time—that is to say, as of July of 1966—whether or not Pueblo Bowl-O-Mat was a profitable operation?

A. It was not, sir.

Q. For Pueblo Bowl-O-Mat, do you know, for accounting purposes, what fiscal year was used?

[1124]

A. Yes, sir; the fiscal year began September 1 and ended on the last day of August.

Q. Can you state from your memory whether or not Pueblo Bowl-O-Mat, in the year ending August 31, 1966, showed a profit or a loss?

A. It showed a loss, sir.

Q. And the next fiscal year, ending August 31, 1967, do you know whether it showed an income or a loss figure?

A. It showed a loss, sir.

Q. Do you have any idea what the amount of that loss was, ending August 31, 1967?

A. In excess of $62,000.

• • •

Q. Now, continuing, Mr. Kenney, how long were you in charge of Pueblo Bowl-O-Mat?

A. Just shortly over six years, sir.

[1125]

Q. Which ended when?

A. It ended approximately April 1 of 1968.

Q. And during the last period you were there, was there still a loss?

A. Yes, sir; there was a loss every year.

Q. Subsequent to your being manager of Pueblo—that is to say, when you changed your position in '68—what was your position, what was your new position?

A. My new position at that time, sir, was regional manager in the Midwest area.

Q. And what bowling centers were included within your scope as regional manager?

A. Minneapolis Bowl-O-Mat, Minneapolis, Minnesota; Saginaw Bowl-O-Mat in Saginaw, Michigan; Skor Lanes Bowl-O-Mat in Taylor, Michigan; Muncie Bowl-O-Mat in Muncie, Indiana; Richmond Lanes in Richmond, Indiana; and Lanecrest Lanes in Franklin, Ohio.

Q. Did your function continue to give you any knowledge or information about how the affairs of Pueblo were going after you left it in 1968?

A. Yes, sir.

Q. Do you know whether or not Pueblo ever showed any net income at the end of the fiscal year?

A. No, sir; Pueblo did not show——

Q. Up to the present.

A. Pueblo has not shown any profit to this date.

[1126]

Q. Coming back again to the period of time when Brunswick began to operate the Belmont center, sometime in 1965—was that March or April, did you say?

A. I believe it was April of 1965, sir.

Q. Now, Mr. Kenney, do you remember any specific league, other than the ones you already testified about, which went over to Belmont, any specific one by name or by its character?

A. I'm sorry, Mr. Hoffmann, I don't believe I understand the date that you are referring to.

Q. I am referring to the point in time when Belmont first began to be operated by Brunswick.

A. Yes, sir.

Q. Is there any specific league that you recall, that you haven't already mentioned in your testimony, which went over to Belmont?

A. None that I haven't already mentioned, sir.

Q. Do you remember any specific league that went over there afterwards, after Brunswick installed the A-2's?

A. Yes, sir; I recall to mind the State Hospital. We had the State Hospital located in Pueblo and they had a league. To the best of my knowledge, it was a 14-team league, and I believe it was comprised of 56 people. They left our center to go to Belmont because

[1127]

of the new A-2 conversions, the time factor.

Q. Now, then, had they bowled the prior season at Pueblo Bowl-O-Mat?

A. Yes, sir; they had.

Q. And how did you know that they left for that reason, that is to say, because of the A-2?

A. Because I asked——

Mr. McNeill: Excuse me, your Honor. If he is going to attempt to testify as to what someone else told him, outside of the presence of Brunswick representatives, it would be hearsay.

The Court: I won't permit hearsay.

Mr. Hoffmann: All I asked him was: How does he know?

The Court: How do you know?

The Witness: I asked them, sir.

Q. Now, did you do any promotional work to bring bowlers into Pueblo Bowl-O-Mat?

A. I would say for almost the entire time that I was there in the six-year period that I spent a minimum of ten hours per week and, in many cases, an entire work week on outside promotion, sir.

Q. Can you give us in more specific terms, I think, what it was that you were doing, how were you trying to promote——

[1128]

A. When I mention an entire work week, I should really be specific and mention a daytime work week. I spent as much as two to three weeks in a row in the public school system teaching youngsters how to bowl. In some cases I had as many as 1500 youngsters that I was giving group lessons to from, say, 8:00 o'clock in the morning until 3:00 o'clock in the afternoon, of course, each one of these being a separate class, with maybe 80-some youngsters in a class, showing them films, and giving them instructions on how to bowl, how to walk with the ball.

Q. And did these efforts actually include going into the schoolhouses for the purpose of instructing the school children?

A. Yes, sir; at that time I spent the first three weeks with the youngsters in the gymnasium, or in the theater when I started showing the films, and then later to the gymnasium, where the actual instruction took place.

Q. Did you continue that school instruction program —if I may call it that—for any length of time?

A. Yes, sir; it continued, that particular program—after my period of three weeks of instruction at the gym were over with—these youngsters were bussed into our

[1129]

bowling center, in our bus, and had enough time on their P.E. class to bowl one complete game, with some further instruction included.

Q. Was the program popular at the school?

A. Very much so, sir, as attested by the amount of youngsters I had in it.

Q. Did there come a point in time when you stopped the program?

A. There came a point in time where the program was curtailed. I won't say that it stopped completely, but it was curtailed.

Q. Tell us about that, please.

A. Well, for a period of years I had a very good rapport with the school system. We ran several "Learn-to-Bowl" classes, not only in South High, but in Central High, Pitts—several of the schools that I had previously—I always had the freedom to go in to the teachers, particularly physical education teachers, and instructors, I had a program laid out in writing, which is what they like, and told them what I wanted to do, how I would like to do it, that I had the approval of the athletic director of that particular school district, and consequently I rarely had any problems.

Q. And did it stop?

A. It was curtailed, sir; not stopped entirely, but

[1130]

curtailed.

Q. Why?

A. About this period of time I would say that we had the bulk of the school, or the "in school" program, as it is referred to. And one of my competitors complained to the school board that he wasn't receiving a fair treatment, that he did not get the same amount of school business that we were able to get.

Q. You say one of your competitors?

A. Yes, sir.

Q. And do you know who that was?

A. At that time, sir, it was Gene Sena, the manager of Belmont Lanes.

Q. Now, Mr. Kenney, based on your experience as the general manager of Pueblo Bowl-O-Mat for six years, 1962 to 1968, can you give us approximately a figure as to the amount of business Pueblo Bowl-O-Mat might have enjoyed had Belmont Lanes been closed down in the middle of 1965 instead of continued by Brunswick?

Mr. McNeill: Your Honor, could we understand that there is a continuing objection to this line of questioning?

The Court: So ordered.

Please answer.

A. Sir, to the best of my calculations, I figured that

[1131]

the bowling income would increase somewhere between 85 and 90 thousand dollars per year.

[1132]

Q. How do you come by those numbers?

A. Well, knowing how many additional bowlers that I could handle, times three games a week, times the length of the season, 33 weeks generally in that area, would give me a certain dollar value, sir.

The Court: You're talking about a fiscal year, 1965?

The Witness: Yes, sir, bowling season, yes, fiscal year.

Q. You are making calculations in your head as to the increased amount of lineage?

A. Yes.

Q. Can you work that out for us in a little more detail?

A. Well, to be specific, sir, I feel that we would get the bulk of the business for the following season, bearing in mind that one of the other centers is a ten-lane center, quite old, limited parking, a second one has 12 lanes, off-street, just off the street, with very limited parking, and league structure being what it is, the advantage of having 40 lanes means we can handle, ten, twelve, fourteen, sixteen, eighteen leagues, where our competitors could not; in other words, if an 18 league was to go to Bowlero, which did have 32 lanes, they would still have to have 16

[1133]

teams bowl on one side of the house and the other two teams would bowl on the other side of the house that was across the concourse area.

The other two smaller competitors could not handle them at all.

Q. Why is that?

A. Because of their limited amount of lanes.

Q. There wouldn't be enough lanes to take care of all of the teams that are bowling in the league; is that right?

A. Yes.

The Court: Why couldn't they bowl on other nights, Mr. Kenney?

The Witness: Well, sir, the number of lanes would not change; in other words, if you had a 16 league bowling on Monday night—

The Court: Why couldn't eight teams bowl on Monday and eight teams bowl on Tuesday?

The Witness: It just isn't done without breaking up the league.

Q. When a league bowls, they all bowl at the same time?

A. Yes, sir. It is a group participation, right.

Q. That's part of the function of league bowling, isn't it?

[1134]

A. Yes, to bowl together.

Q. Now, Mr. Kenney, you have done these calculations and you have come to the conclusion, did you say it would make a difference of $90,000?

A. Yes, I did.

Q. I show you Plaintiff's 53 in evidence and I ask you to address yourself to this line for Pueblo Bowl-O-Mat.

A. Yes.

Q. You see that under, "Additional Annual Bowling Revenues," the entry is made 90,000 to 100,000?

A. Yes.

Q. You corroborate that to the extent that you feel it would be 90,000; is that your testimony?

A. Yes. I was speaking when I mentioned a 60,000 figure, thereabouts, I was speaking Monday through Friday, and of course there are weekend leagues and a great

deal of weekend open play, plus daytime ladies' leagues that we haven't mentioned, and junior leagues.

Q. Well, now, when you make money from bowlers coming into the center and bowling, is money also made in other ways at the Pueblo Bowl-O-Mat center?

A. Yes.

Q. Can you tell us in what ways?

[1135]

A. We have the snack bar where they can have food or a drink, we have the pro shop where they may wish to buy a ball, bag or pair of shoes.

We have vending machines where they may purchase a can of pop.

We have a cocktail lounge where they might enjoy a cocktail or a bottle of beer.

And there are other vending machines such as cigarettes, candy and what have you, where they would also spend additional moneys.

Q. I show you Plaintiff's 9 in evidence, I think we have a chart of this, but it is too hard to turn it over.

I ask you if you will look at the entries on the bottom of Plaintiff's 9.

The Court: I want to alert you, Mr. Hoffmann, we have to stop at a quarter after three.

Mr. Hoffmann: Yes. I think we will finish.

Q. Do you see on the bottom of Plaintiff's 9 which you have in your hand the statement, "For each additional thousand dollars of bowling revenue net income increases"?

A. Yes, I do.

[1136]

Q. And do you notice three percent for shoe rental?

A. Yes, sir.

Q. Does that accord with your knowledge derived while you were manager of the center at Pueblo?

A. Yes, it would.

Q. And would the same go for the other items here, 20 percent for snack bar, 25 percent for bar, 3 percent pro shop and 4 percent for what I alone call mach and misc?

A. I'd have to agree with all of them, sir, including mach and misc.

Q. And then when you—when this, all these calculations, are done, it comes over in this side to $1109; can you tell us what that means?

A. That means for each $1,000 additional of bowling income our net income increases by that amount, sir.

Q. Does that accord with your knowledge and experience as a manager of Pueblo Bowl-O-Mat?

A. Yes, it would.

Q. Now, looking once more at Plaintiff's 53, you testified a moment ago as to your agreement with this column for additional annual bowling revenues?

[1137]

A. Yes.

Q. Now, it is multiplied, is it not, by $1109.

A. Yes.

Q. And that $109 reflects the additions that you have talked about, such as the snack bar and the pro shop?

A. Yes.

Q. The bar, and so on, is that right?

Then, sir, in your opinion and to the best of your knowledge, would you agree with this annual damage figure as found on P-53 for Pueblo Bowl-O-Mat in the amount of $99,810 to $110,900?

A. Yes, sir, I would agree.

Q. And as far as the other figures are concerned, this is a matter of dates and arithmetic; isn't that so?

A. Yes.

• • •

[1140]

CROSS-EXAMINATION (Continued).

By Mr. McNeill:

Q. During what years was it, Mr. Kenney, that you were manager of the Pueblo Bowl-O-Mat center in Pueblo, Colorado?

A. I was the manager of Pueblo Bowl-O-Mat from May of 1962 to very late March of 1968.

Q. Practically six full years?

A. Yes, sir.

Q. And subsequently you have been regional manager for the Midwest for various Bowl-O-Mat centers?

A. That's correct, sir.

Q. And your responsibilities have included supervision of the Pueblo Bowl-O-Mat center as well during this latter period?

A. That is not correct.

[1141]

Q. I see.

How long was it that your responsibilities for Pueblo continued after you left in March 1968?

A. Probably six months, sir.

Q. I see.

Have you had occasion to be in Pueblo since 1968?

A. Yes, sir, I have.

Q. And were they—was that in connection with any responsibilities for Pueblo Bowl-O-Mat?

A. No, sir, it was not.

Q. Or for the parent company?

A. No, sir, it was not.

Q. But you are familiar with the bowling centers operating in Pueblo today, are you not?

A. Yes, sir, I am.

Q. Going back to 1960, I know you weren't manager there at the time, there were three bowling centers operating in Pueblo prior to the opening of the Bowl-O-Mat center; isn't that correct?

A. Yes.

Q. And the largest of those was Bowlero with 32 lanes?

A. That's right.

Q. And that was AMF equipment?

A. Yes.

[1142]

Q. And in the more or less downtown area there was a ten-lane center named Park; is that right?

A. Yes.

Q. And just south of the downtown area there was a 12-lane center named Payne's Lanes?

A. That's right.

Q. And all three of those centers contained AMF pinsetting equipment, did they not?

A. That's right.

Q. And still do?

A. Yes.

Q. And at that time Bowlero's percentage of the lanes being operated was, let's see, 32 lanes of the 54 lanes, total, or greater than half; isn't that correct?

A. Yes, sir, that would be correct.

Q. Now, did Bowlero occupying that position of more than 50 per cent of the lanes have any power to exclude competition from the Pueblo bowling market?

A. No, sir.

Q. Nor, of course, did Payne's or Park Lanes; isn't that correct?

A. That's right.

Q. And in fact that's most clearly demonstrated by the opening of Pueblo Bowl-O-Mat, isn't it?

A. Yes.

[1143]

Q. Prior to the opening of Pueblo Bowl-O-Mat did Bowlero, having more than 50 per cent of the lanes in the town, have the power to fix the prices set by the other two operators?

A. I can't answer that.

Q. After Pueblo Bowl-O-Mat opened its center did Bowlero have the power to set the prices at Pueblo Bowl-O-Mat?

A. Would you repeat that, please?

(Record read.)

A. No, sir, they did not.

Q. Did Pueblo Bowl-O-Mat have the power to set prices at Bowlero or at Payne's or Park?

A. No, they did not.

[1144]

Q. Mr. Kenney, do you agree with the description given the other day by Mr. Lieblich of the conditions at Bowlero—I believe you were in court when he testified—that it is not an attractive center, that it has many, many columns within it, that its snack bar is built very disadvantageously, and that it is a very cramped and very crowded facility?

• • •

A. I would say the description was accurate, sir.

Q. After Pueblo Bowl-O-Mat opened, it was the largest center in Pueblo, isn't that correct?

A. That is correct, sir.

Q. In fact, it was eight lanes larger than its closest competitor in size, namely, Bowlero?

A. That is correct.

[1145]

Q. And it wasn't cramped, and it didn't have columns, it was roomy, and it had an open expanse, as I believe you described?

A. That is correct, sir.

• • •

Q. When you began to manage Pueblo Bowl-O-Mat, did you have an opinion as to whether that center, your center, had any substantial competitive advantages over the other centers in town, first of all, because of its physical appearance?

A. I did.

Q. And what was your opinion, that you had that advantage?

[1146]

A. Yes, sir.

Q. Was there anything wrong in that?

A. No, sir.

Q. That helped you attract bowlers to Pueblo, didn't it, Pueblo Bowl-O-Mat?

A. Yes, sir.

Q. Pueblo Bowl-O-Mat also has a late liquor permit on Sunday, do they not, it can operate after 8 p.m.

A. Not at that time, they didn't, no.

Q. When did they acquire that right, approximately?

A. Allow me just a moment to think about this, please.

(Short pause.)

A. (continuing) That has happened—I beg your pardon, sir. That is correct.

Q. And Belmont, after it opened in 1962, and for many years thereafter, had no such right, isn't that correct?

A. That is correct, sir.

Q. And Pueblo Bowl-O-Mat had at least one school bus that you talked about the other day; did it have more than one?

A. No, sir; it did not, one bus.

[1147]

Q. And you used that bus to help with your "in school" programs that you described?

A. That is correct.

Q. Did Bowlero have such a bus?

A. No, sir; they did not.

Q. How about Payne's, Park or Belmont?

A. No, sir; they did not.

Q. Did Pueblo Bowl-O-Mat—or does Pueblo Bowl-O-Mat have a large meeting room in its facility?

A. Yes, sir; it does.

Q. Do the other centers in town?

A. I can't answer your question in the way that you put it.

Q. Did they, at the time that you left Pueblo, in 1968?

A. I would say with the exception of one center, they did have meeting rooms, yes.

Q. Large meeting rooms, such as the one you had at Pueblo Bowl-O-Mat?

A. Large as—

Q. All right. Did you see anything wrong with the fact that Pueblo Bowl-O-Mat had these various advantages over the other centers in operating Pueblo?

A. No, sir; I did not.

Q. And they were helpful to you in attracting

[1148]

bowlers to Pueblo Bowl-O-Mat?

A. Yes, sir.

Q. Do you know where the bowlers came from that bowled in Pueblo Bowl-O-Mat the first year or two that it was open; in other words, were they people that hadn't ever bowled before, or did they include many bowlers—

The Court: Wait a minute. You have got a triple question there. Repeat it.

(Question read as follows:

"Do you know where the bowlers came from that bowled in Pueblo Bowl-O-Mat the first year or two that it was open")—

The Court: Period. Can you answer that?

The Witness: I can't answer that question.

The Court: What is the next part?

(Question read as follows:

"In other words, were they people that hadn't ever bowled before, or did they include many bowlers—")

The Court: Finish it.

By Mr. McNeill:

Q. —who were bowling up to that point in time at the other centers in town?

[1149]

A. At that time, I can't answer that question.

Q. In 1962, when you started being responsible for developing bowling at Pueblo Bowl-O-Mat, did you attract

any leagues that had previously been bowling at other bowling centers?

A. In 1962 I did not, sir.

Q. What about 1963?

A. Not entirely—not as you have asked the question, no.

• • •

Q. Were you able to attract individual bowlers to bowl at Pueblo Bowl-O-Mat in 1962 and 1963

[1150]

that had prior to that bowled at Bowlero, or Payne's, or Park?

A. In the early—in '62 and '63 I would have to say no to that question, sir; and perhaps in later years, yes.

Q. Mr. Kenney, are you familiar with the amount of bowling business that is being done now by Pueblo Bowl-O-Mat?

A. Yes, sir.

Q. In a general way or rather specifically?

A. In a general way; yes, sir.

Q. And does Pueblo Bowl-O-Mat enjoy business at a rate of approximately nine or 10,000 lines per lane per year?

A. Closer to 9,000, sir, than 10.

Q. And do they have a full first shift?

A. To the best of my knowledge, they do, sir.

Q. And what about the second shift, the later evening shift, about what percentage of their——

A. I don't believe the second shift would be better than 10 percent.

Q. Are you familiar with the amount of business being done now at Bowlero, the same question about league bowling, the first shift and the second shift?

[1151]

A. No, sir; I am not.

Q. What about the business being done at Payne's?

A. No, sir; I am not familiar.

Q. Or Park?

A. No, sir; I am not familiar.

Q. And do you know about the first shift and the second shift bowling at Belmont?

A. To my knowledge, the first shift is completely full; the second shift would be questionable.

Q. You don't know whether they have more or less than 10 percent of their second shift booked?

A. No, sir; I do not.

Q. Do you know what Pueblo Bowl-O-Mat's largest league is at the moment?

A. I assume you mean in regard to teams and members per team.

Q. Yes.

A. To the best of my knowledge, I feel quite certain there is a 20-team league, comprised of five men, which would be 100 people.

[1152]

Q. Are there more than 20—sorry—are there more than two such leagues that have 20 teams or thereabouts?

A. I would doubt that.

Q. And if Pueblo Bowl-O-Mat were to close today do you have any opinion as to whether the 20-league—20-team league you have just described would continue to bowl at one of the other centers in town, quit, or would split up?

A. That's a hypothetical question, sir.

Q. Is it impossible for you to speculate upon that?

Mr. Hoffmann: Your Honor—

(Record read.)

The Court: Do you have an opinion as to that, or no?

The Witness: I feel they would continue to bowl.

Q. You think they would bowl at—try to bowl at Park Lanes?

A. I don't feel that I am in a position to answer that question, Mr. McNeill.

Q. All right. What about at Payne's Lanes, do you have any opinion as to whether they would attempt to bowl at Payne's Lanes?

[1153]

A. No, I do not.

Q. Do you have an opinion as to whether they would attempt to bowl at Belmont Lanes?

A. I am sure they would be interested.

Q. What about Bowlero?

A. I think they would be interested in bowling there, also.

Q. Now, if they'd be interested in bowling at Bowlero, that would mean they'd have to split up in the sense that part of the league would bowl on one side of the house, because they have a maximum of 16 lanes on that side of the house, and part of the league would bowl on the other side of the house; isn't that correct?

A. That's right, sir.

Q. And bowlers sometimes do this?

A. Yes.

Q. In order to bowl together?

A. Yes.

Q. Is that 20-team league a first shift, or a second shift, league?

A. I believe that's a second shift league.

Q. If Pueblo Bowl-O-Mat were to close today, do you have an opinion as to whether they would attempt to obtain a first shift spot in another center, or attempt to find a second shift spot?

[1154]

A. I have reason to believe, sir, they are quite happy at the time spot they are in.

Q. Is the meaning of your answer that, therefore, they would look for a second shift spot at one of the other centers?

A. That's correct, sir.

Q. Do you know how many of the leagues presently bowling at Belmont are composed of more than ten teams?

A. No, I do not know the answer to that.

Q. Does Pueblo Bowl-O-Mat enjoy league bowling from leagues that are composed of less than ten teams?

Mr. Hoffmann: May I hear that question again?

(Record read.)

Mr. Hoffmann: I object to the form of the question.

The Court: Why? He is familiar with ten-team leagues.

Mr. Hoffmann: No. My objection is much more limited than that, just to the word "enjoy."

Does Pueblo Bowl-O-Mat enjoy.

I am not quite sure what it means myself.

The Court: Are they patronizing—

The Witness: I believe your question was, sir, are there many teams—many leagues over

[1155]

eight teams?

Q. Yes, are there leagues at Pueblo Bowl-O-Mat of less than ten teams?

A. Yes, sir, I am sure there are.

Q. Would that comprise at least half of the league business at Pueblo Bowl-O-Mat?

A. I'd be inclined to say no to that.

Q. All right.

Consider the bowling business done at Belmont after it opened in 1963, 1964, 1965.

You were in Pueblo at that time, weren't you?

A. Yes.

Q. And were you generally familiar with the extent to which leagues bowled at Belmont during that time?

A. I would say pretty much so, sir.

Q. Do you know whether they had any leagues of 20 teams or more?

A. I know of one such league, yes.

Q. Do you know of whether half of their business, league business, was of leagues of ten or fewer teams?

A. I wouldn't know the answer to that.

Q. And if Belmont Bowl were to have closed in 1965, in 1965, focusing again on the league business, do you have an opinion as to how many of those leagues

[1156]

would have disbanded at that time?

A. I would have to say less than one league, sir.

Q. And all of the other leagues in your opinion would have wanted to continue to bowl together?

A. Yes, sir, I feel they would.

Q. What about the open bowling at Belmont Bowl during 1965, if Belmont were to have closed do you have an opinion as to the percentage of that business that would

have ceased altogether rather than trying to go to some other center?

A. I would doubt if it would be more than five per cent of the total bowlers.

I don't think it would go that high.

Q. And in 1965 I believe you testified that the early league shift at Pueblo Bowl-O-Mat was full?

A. Yes, sir, it was.

Q. But that there were openings in the second shift?

A. That's right.

Q. And do you have an opinion as to the percentage of first shift league bowlers at Belmont who if Belmont had closed would want to bowl at Pueblo Bowl-O-Mat on the second shift, on a second shift?

A. I'd have to believe, sir, that a very strong percentage of those people could be placed on a second shift.

[1157]

Q. Well, I think the question had to do with how many of them would want to bowl on second shifts.

Can you answer it in that form?

A. No, sir, I can't.

Q. You don't have any opinion one way or the other, then, as to how many of such early shift bowlers in Belmont would want to bowl at a second shift at Bowl-O-Mat?

A. The way you stated your question, I'd have to say no, I do not.

Q. Do you have an opinion, Mr. Kenney, of the overall percentage of bowling business from Belmont, if Belmont were closed in 1965, that would have been placed, to use your phrase, at Pueblo Bowl-O-Mat?

A. I would believe that the percentage would be between 65 and 70 per cent of the total bowlers at Belmont, would come to Bowl-O-Mat.

Q. And bowl just as regularly and just as frequently at Pueblo Bowl-O-Mat?

A. I would have to feel they would.

Q. Even though the only time spot available for early league bowlers would be the late league shift?

A. I have to feel that way, yes.

Q. Finish up at 11:15 or 11:30 at night?

A. That's right.

[1158]

Q. 65 to 70 per cent?

A. In addition to that you are also talking about day league bowlers, which we would have more than sufficient room for.

Q. That's right.

What percentage of Pueblo Bowl-O-Mat's business was derived from league bowlers as opposed to open bowlers?

A. I couldn't answer that question.

Q. Close to 70 per cent?

A. I would think so.

Q. Do you have any opinion as to the percentage of Belmont early shift league bowlers that could find a place at Bowlero on the early shift had Belmont closed in 1965?

A. I'm sure that none of them would be able to find a spot, sir.

Q. And is that because in your judgment Bowlero enjoyed a completely booked full—sorry, completely booked first shift?

A. That's right.

Q. What about Payne's and Park, were they similarly fully booked on the first shift?

A. To the best of my knowledge they were booked 100 per cent on the first shift.

Q. And all of them had openings on the second

[1159]

shift?

A. Very much so, yes.

Q. In fact, none of them probably had more than 10 per cent of their second shift filled up; isn't that true?

A. I think that would be a good estimate.

Q. And yet it is your feeling that 65 to 70 per cent of the early shift bowlers had Belmont gone out of business would indeed bowl on the second shift at Pueblo Bowl-O-Mat?

A. Yes, sir, I do.

Q. Mr. Kenney—by the way, how do you spell your last name?

A. K-e-n-n-e-y.

[1160]

Q. Are you aware of a change in ownership at the bowling center called Bowlero that occurred in 1969?

A. Yes, sir, I am aware of that.

Q. Is it true since ownership did change that Pueblo Bowl-O-Mat in 1969 did not enjoy—strike that—did not have the power to exclude a new owner from the Pueblo bowling market?

The Court: What year is that, 1969?

Mr. McNeill: 1969.

The Witness: Would you repeat that, please?

(Record read.)

The Witness: That's correct.

• • •

[1161]

Q. Did Belmont in 1969 have the power to exclude from the competitive bowling center operating market,

Pueblo, Colorado, a new owner, a new operator, of Bowlero Bowl?

The Court: I will permit it if you say, "in your opinion," based on this man's experience.

Q. I will qualify it with His Honor's suggestion.

The Court: Do you have an opinion?

The Witness: No, they did not.

Q. Mr. Kenney, are you generally familiar with Pueblo Bowl-O-Mat's damages claims in this litigation?

[1162]

A. Yes, sir, I am.

Q. And are you aware of the fact that Pueblo Bowl-O-Mat is claiming damages beginning with the 1963-64 bowling season?

A. Yes, I am.

Q. Do you have Plaintiff's Exhibit 8 handy?

A. Yes, I do.

Q. The top line of that exhibit indicates lineage per lane from Pueblo Bowl-O-Mat's bowling center, doesn't it?

A. Yes.

Q. And focusing on the first year of claimed damages by Pueblo Bowl-O-Mat, and that would be for the 63-64 bowling season or represented by the figures under the column 8/31/64, right?

A. Yes.

Q. Isn't it true, sir, that comparing that season, first year of the claiming of damages, with the previous season, the one ending 8/31/63, that your bowling lineage had gone up some 1,400 lines per lane?

A. That's right.

Q. And nevertheless, Pueblo Bowl-O-Mat is claiming damages for that 63-64 season?

A. That's right, sir.

[1163]

Q. How were you able to build up the lineage from 8300 some lines per lane in one season to 9794 lines per lane the next season?

A. Well, as is usually the case, when a new center opens, the bowlers leave the existing centers because everybody likes to be first in a new center.

And in many cases they come—they become disenchanted, and they come back to where they had originally left from.

And I realize—I feel that in most cases, that's where we picked up that additional lineage.

Q. In other words, for the '63-'64 season you picked up lots and lots of bowlers that had bowled one season at Belmont which you attracted them to Pueblo; is that the sense of your testimony?

A. I don't know what you mean by "lots and lots."

Q. Well, 1400 lines per lane times 40 lanes?

A. That would be the figure then, sir. Lots and lots to me sounds like a lot of people.

Q. But the increase in your business in the '63-'64 season was largely attributable to bowlers coming from Belmont; is that right?

A. I wouldn't say yes to that, no.

Q. Well, then, how would you answer it?

The Court: It is a little confusing to me.

[1164]

The Witness: Yes, sir; it is. I'm not—what I'm saying is not all of those bowlers came back. We did create some new bowlers through our learn-to-bowl program and various promotions.

So it is a combination of bowlers returning to our center along with the promotions that we had going on at the time.

Q. Was there anything wrong with your having persuaded bowlers that once bowled at Pueblo Bowl-O-Mat, subsequently bowled over at Belmont, to come back to Pueblo Bowl-O-Mat?

A. I think the way you put that question, sir, I think it is misleading.

The Court: Now, if you can't answer it, say you can't answer it, please.

The Witness: I can't answer the question.

The Court: Don't rule on the questions.

Q. Wasn't that one of your jobs, to attract bowlers who were bowling at Belmont during the '62-'63 season to come back and bowl at Pueblo Bowl-O-Mat?

A. Yes.

Q. And didn't you do it, weren't you successful?

A. I don't think I was completely successful, no.

[1165]

Q. You were partially successful then, weren't you?

A. Partially, yes.

Q. Was there anything wrong with your being successful to that extent?

A. No, sir.

Mr. Hoffmann: Your Honor, I'd like at least the "anything wrong" part of the question clarified.

Is it morally wrong, or legally wrong? Because if he is asking if it is legally wrong, then, he is not a lawyer, and he is not entitled to that opinion.

If he's asking whether he is morally wrong, maybe we can lay a foundation for the answer by going into the morals of the witness—

The Court: I don't know whether wrong is—is that accepted practice, competitive practice, in your experience?

Q. Let's put it that way. Is it acceptable, competitive practice, from your experience, to attract bowlers from other centers to bowl in your center?

A. Yes.

The Court: And to bring back bowlers that have left your center?

[1166]

The Witness: Yes.

Q. Did I understand your testimony correctly from Friday that going to the year 1965 when Brunswick began operating Belmont, in April of 1965, for the following season, 1965-66, none of the leagues that had been bowling at Pueblo Bowl-O-Mat left to bowl for the '65-'66 season at Belmont?

Mr. Hoffmann: Your Honor, the witness is being asked now as to whether or not the lawyer understood correctly his testimony.

I submit it is not possible for the witness to answer that.

The Court: You testified—

Q. Mr. Kenney, did you testify Friday that none—

The Court: I will sustain the objection, to keep the record in order.

Q. —that none of the leagues bowling at Pueblo Bowl-O-Mat during the '64-'65 season left Pueblo Bowl-O-Mat to bowl at Belmont for the '65-'66 bowling season?

A. That is correct.

Q. Mr. Kenney, looking again at the Plaintiff's Exhibit 8, at the bottom line, which indicates the final income or loss for the operations

[1167]

of the Pueblo Bowl-O-Mat—

Do you have it in front of you?

A. Yes, I do.

Q. And in each instance it was a loss suffered by Pueblo Bowl-O-Mat; is that right?

A. Yes.

Q. At what point in time was it that the A-2 equipment was installed over at Belmont?

A. It would be July of 1966.

Q. So its first competitive impact, if any, in the Pueblo Bowl-O-Mat bowling market would be for the season '66-'67; is that right?

A. That's right.

Q. And is it not a fact that the bottom line figure for Pueblo Bowl-O-Mat Inc. has improved every year following the introduction of A-2's in the Pueblo bowling market? Looking at the '67 figure, '68 figure, '69 and so forth?

A. I don't believe I understood your question, Mr. McNeill.

Would you repeat that, please?

Q. The question is simply, isn't it a fact that after the A-2's were introduced in Pueblo, Pueblo Bowl-O-Mat's bottom line figure improved each year?

A. I can't read my figure on one year, 1969.

[1168]

The Court: Show him the exhibit.

The Witness: Yours is as bad as mine.

The Court: Where is the one that's in evidence?

Mr. Hoffmann: Can I have mine back, please?

A. This one is mine.

The answer to that is yes, sir.

[1169]

Q. Mr. Kenney, did you testify on Friday that, in your opinion, if Belmont had closed, Pueblo Bowl-O-Mat bowling income would increase on a per year basis 85 to 90 thousand dollars per year?

A. Yes, sir; I believe those are the figures I gave on Friday.

• • •

Q. Did you also testify that, in your opinion, $90,000 worth of bowling revenue would come to Pueblo Bowl-O-Mat?

A. I believe that is correct, sir.

Q. And did you testify that, in your opinion, $100,000 per year of bowling revenue per year would come to Pueblo Bowl-O-Mat?

A. I don't believe I testified to that figure, sir.

Q. And do you have an opinion as to whether $100,000 a year of bowling income would come to Pueblo Bowl-O-Mat?

[1170]

A. It's conceivable.

Q. Well, sir, I ask you whether, based on your six years in Pueblo, and your other experience with Bowl-O-

Mat, and other bowling centers, you have an opinion as to whether that would have happened, in fact?

• • •

The Court: Do you have an opinion? Answer yes or no.

The Witness: Yes.

The Court: What is it?

The Witness: I feel that it would, yes.

By Mr. McNeill:

Q. A hundred thousand dollars?

[1171]

A. Yes, sir.

Q. Mr. Kenney, didn't you previously testify, at an earlier hearing three years ago, that, in your opinion, $60,000 of bowling income would have come to Pueblo Bowl-O-Mat had Belmont closed?

• • •

[1172]

A. According to the record, that is correct.

Q. Mr. Kenney, has your opinion changed in the matter?

A. Yes, sir; it has.

Q. And with the benefit of refreshing your recollection as to what you testified to three years ago, what is your opinion today as to the total dollar bowling revenue that would come to Pueblo Bowl-O-Mat if Belmont had closed?

A. I feel that today the amount of money would be in the $90,000 bracket.

Q. If Belmont had closed back in 1963, at the end of the '62-'63 bowling season, and was not in operation during the 1963-64 bowling season, do you have an opinion as to the amount of bowling revenue that would have come to Pueblo Bowl-O-Mat as a result of Belmont closing?

A. No, I do not.

Q. Do you have an opinion as to whether it would be more or less than $60,000?

A. I have a feeling it would be more, sir.

Q. Do you know what the bowling revenue was at Belmont Bowl for the 1965-1966 bowling season?

A. At this time, sir, I don't, no.

Q. Or the '66-'67 bowling season?

A. I have an estimated "guesstimate."

[1173]

Q. And what would that be, sir?

A. I believe at that time it was approximately 120 to 125 thousand dollars.

Q. For bowling lineage, bowling revenue, excluding bar sales, and so forth?

A. Yes, sir; that would be strictly bowling money.

Q. $120,000?

A. That's my estimate, sir, yes.

Q. And do you have an estimate as to what Belmont bowling revenue was for the '71-72 bowling season?

A. I believe, sir, it was about approximately $130,000 for bowling income.

Q. Taking your "guesstimate" of $120,000 as bowling revenue, Belmont in the 1966-67 bowling season, if Belmont had closed at the end of that season, how much, in your opinion, bowling revenue would have gone to Pueblo Bowl-O-Mat?

• • •

[1175]

A. My answer to that would be between 80 and 82 thousand dollars.

Q. And do you base that opinion on some percentage figure that you are applying to the $120,000?

A. Yes, sir; I do.

Q. And the percentage figure that you are applying, sir?

A. Approximately 70 per cent.

Q. And so if you had in front of you the actual bowling revenue figures for Belmont for any given bowling season, in order to form your opinion as to the amount of that business that would in turn go to Pueblo Bowl-O-Mat, had Belmont closed, you would apply a 70 per cent factor?

A. Yes, sir; I believe I would.

Q. What factor would you apply, Mr. Kenney, if you were estimating the percentage of the Belmont business that would go to Bowlero, if Belmont closed?

A. I would say that would be approximately 20 per cent, Mr. McNeill.

Q. And what would happen to the remaining 10 per cent, in your opinion?

A. Well, a small portion of it would have been lost, sir. And a very small portion would be split up between Park Lanes and Payne's Lanes.

• • •

[1200]

MILTON MENDELSON, called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Mendelson, where do you live?

A. Norwood, New Jersey.

Q. What is your occupation?

A. I'm the manager of the Paramus Bowl-O-Mat.

Q. Can you tell us a little bit about yourself; where were you born?

A. I was born in New York City.

Q. And where did you live during childhood?

A. Sir?

Q. Where did you live during your childhood?

A. Most of my childhood was spent in Jersey City.

Q. And your education, where was that obtained?

[1201]

A. I graduated Dickinson High School, Jersey City, and from there matriculated at Ohio State University. I graduated in 1933.

Q. Would you be good enough to trace for us what happened to you after you got out of Ohio State?

A. Well, in 1933 we were in the midst of a rather deep depression and college graduates were a dime a dozen, and jobs were not to be found.

After searching fruitlessly for sometime, a friend of mine had a wholesale tobacco business, and he suggested that possibly I might establish a little wholesale tobacco route of my own. And I went into that business.

Unfortunately, I was short of funds and pretty soon my customers had my money and I couldn't pay my bills. So I got out of that business. And from there I went to work for the Brunswick-Balke-Collender Company, as it was known in 1937.

Q. You say as it was known in 1937; what do you mean by, "it,"?

A. Well, the current Brunswick Corporation was known in 1937—the corporate name was the Brunswick-Balke-Collender Company.

Q. Is that the company, the current Brunswick

[1202]

Company, the defendant here; is that the company you are talking about?

A. Yes.

Q. You were employed by the defendant in 1937, is that right?

A. Correct.

[1203]

Q. And in what capacity?

A. I was a sales representative out of the New York office.

Q. Can you tell us about how long you held that position?

A. I held the position of sales representative until 1946–'47. I then became a sales engineer for the same company. And in 1948, I believe, I became sales manager of the New York office. And I held that for one year. In the latter part of '49 I became branch manager of Philadelphia.

Q. What is meant by a branch manager?

A. Well, I was in charge of the operation of the branch, all functions, sales, responsible for making a profit.

Q. Brunswick was not then in the business of operating bowling centers, is that right?

A. No, sir.

Q. So when you speak of being in charge of sales, what are you talking about?

A. Sale of equipment and supplies. I had a staff of salesmen covering the state.

Q. Did that include the sale of pinsetters and lanes, was that part of your function?

A. Well, when I first came into Pennsylvania, we at

[1204]

that time did not have automatic pinsetter, as such. We had pinsetters, but not fully automatic. I believe it was in 1956 that we introduced the first Brunswick automatic pinsetter.

Q. And did you sell lanes in—

A. Yes, we sold new bowling centers, opened up new bowling centers for individual people.

Q. And other equipment for use by bowlers, such as bowling balls?

A. Yes, the complete line of bowling equipment—balls, shoes, bags.

Q. But not the automatic pinsetter, because it didn't exist, is that it?

A. That is correct. We sold a semiautomatic pinsetter.

Q. And then what did you do next?

A. I left Brunswick in 1957, I believe, the latter part of '56, to go into the operation end of the business. I, with some associates, formed a company and opened up a center in south Jersey called Eldorado Lanes. It was a 32-lane center. We had a cocktail lounge, snack bar.

Q. What was it equipped with?

A. We had 32 Brunswick lanes and 32 Brunswick automatic pinsetters, a lovely cocktail lounge, fully carpeted.

[1205]

Q. And after that, what did you do next, in the form of furthering—

A. Well, it was very successful. And from there we opened up—in a joint venture with some other people—a 48-lane center in Philadelphia called Cotton Lanes.

Q. Is it fair to say that you and your joint venturers were in the operating business, is that right?

A. Yes.

Q. How long did you stay in the operating business?

A. Until 1962, I believe.

Q. '62?

A. In 1961 one of my associates and myself sold our interest in both Eldorado and Cotton Lanes and together we purchased an existing bowling center in Philadelphia called Stenton Lanes, a 20-lane center. We purchased the property and the equipment.

Q. Was that a successful adventure?

A. Yes, it was.

Q. How long did you operate it?

A. I was there for a year—approximately a year, year and a half. And I then sold my interest to my then associate. I then went to work—back to work for Brunswick.

Q. In what year did this happen?

[1206]

A. I believe it was in 1962.

Q. And what was your job at Brunswick?

A. I became Director of Operations for their European centers. I was based in Zurich, Switzerland.

Q. You say you were Director of Operations for European centers, for Brunswick European centers?

A. Yes.

Q. Did they have any such?

A. At the time of my arrival in Europe I believe there were four centers in operation. Ostensibly they were building the centers to interest foreign capital in establishing centers in Europe, throughout Europe. And it was necessary at that time to put up pilot centers, so to speak. And there were four in operation.

Q. When you were in charge of these European operations, did your duties include the purchase of equipment for use in these European bowling centers?

A. In the centers that were still not open—and there were a number that I opened while I was over there, like West Berlin, one in France, one in Rome, one other—I was required as—part of my responsibility was to pass on all the equipment going into the centers.

Q. Did you, in the course of discharging that function, learn what the price of a Brunswick automatic pinsetter was?

[1207]

A. Yes, I was familiar with the price of a pinsetter. When I say the price—

Q. What was it in 1962 and '63?

A. I believe the selling price—domestically—was in the vicinity of $7800. I believe somewhere in that vicinity.

Q. If I suggested to you that there is testimony in this proceeding that the pinsetter was sold domestically at $8100, would that change your testimony?

• • •

A. It's very possible that it would have been $8100.

Q. Do you know anything about the manufacturing cost of the automatic pinsetter?

A. I was familiar with the manufacturing cost in Europe. I remember specifically discussing the cost of manufacturing—

Mr. McNeill: Excuse me.

The Court: Just a minute.

Mr. McNeill: I think the witness has answered the question, your Honor.

The Court: Repeat it, Mr. Bremer. What was

[1208]

the answer?

(Record read as follows:

"Answer: I was familiar with the manufacturing cost in Europe. I remember specifically"—)

The Court: No, no. "In Europe"—period. "I remember"—stricken.

By Mr. Hoffmann:

Q. What was the cost?

The Court: In Europe.

Mr. Hoffmann: In Europe.

A. A machine was being manufactured by the Berliner Machine Works in West Berlin and the cost was in the vicinity of $1900.

Q. Did you, in your role as Director of Operations at Brunswick, or in any other way as a Brunswick employee, know what the manufacturing cost domestically for the automatic pinsetter was?

A. I can answer that in this fashion, Mr. Hoffmann, that—

The Court: The question is: Do you know?

The Witness: Yes.

Q. And what was it?

A. Somewhere in the vicinity of $2200.

Mr. McNeill: Your Honor, I move that the answer be stricken as not responsive.

[1209]

Mr. Hoffmann: I beg your pardon.

The Court: Why, Mr. McNeill? He said "somewhere." The fact that he used "somewhere"?

Mr. McNeill: I believe Mr. Hoffmann's question was the manner in which he knew.

The Court: Let's hear the question again.

(Record read as follows:

"The Court: The question is: Do you know?

"The Witness: Yes.

"Question: And what was it?")

The Court: Overruled. Approximately $2100, you say?

The Witness: $2200.

The Court: $2200.

By Mr. Hoffmann:

Q. Now, did there come a time when you left as Brunswick Director of Operations for Europe?

A. Yes.

Q. When was that?

A. 1963.

[1210]

Q. What did you do next?

A. I then came to work for National Bowl-O-Mat Corporation, that is, the current Treadway—

Q. In what capacity?

A. Sir?

Q. In what capacity?

A. As manager of Skor Lanes in Taylor, Michigan.

Q. And Skor Lanes is a—

A. 48-lane center.

Q. I didn't hear you.

A. A 48-lane center.

Q. Is it a plaintiff in this proceeding, do you know?

A. No, sir; it is not.

Q. My question was: Do you know?

Now, Mr. Mendelson, how long did you remain in the capacity of general manager of Skor Lanes?

A. I believe it was a year and a half, approximately a year and a half.

Q. And what did you do after that?

A. I then became a regional manager.

Q. For?

A. For the NBO, as we were known.

Q. What was your region?

A. I covered part of the Midwest; in addition—

[1211]

part of the Midwest was the area I covered for National Bowl-O-Mat.

Q. And did your region remain what you just said, part of the Midwest, or did it—

A. I can be more specific as to exactly where I covered.

The Court: Please, don't volunteer.

Answer the questions.

Q. What was included in the region, Mr. Mendelson?

A. I covered Saginaw, Michigan; Minneapolis, Minnesota; Pueblo, Colorado—

The Court: Indianapolis?

The Witness: No, sir.

A. (continuing)—and Taylor, Michigan.

Q. How long did you function or remain as regional manager for the Midwest?

A. I believe it was for a period just under two years.

Q. When you say the two years, can you be specific—

A. I believe it was until 1967.

Q. And thereafterwards what did you do?

A. I then became director of operations at the home office in Paterson, for all the bowling centers.

[1212]

Q. What was your function as director of operations for the bowling centers?

A. My function was the internal operations of the centers, the promotion of the business for the centers, along with the managers, in conjunction with other people hiring new managers.

Q. Were you supervising the functions of those various centers?

A. Yes. I had a regional manager by the name of Mr. Kenney. Mr. Kenney served under me as a regional manager, working out of Skor Lanes in Detroit, Michigan—in Taylor. That was his base.

Q. Until what year did you stay in this function?

A. For what period of time?

Q. Yes, as the director of operations.

A. Until late '69.

Q. What did you do then?

A. I then resigned and went into the executive personnel business.

Q. What are you doing now?

A. I presently manage Paramus Bowl-O-Mat in Paramus.

Q. So you returned to Bowl-O-Mat?

A. I returned to Bowl-O-Mat; yes, sir.

Q. When did you do that?

[1213]

A. In late 1970.

Q. Now, Mr. Mendelson, with the exception of what you have just said about your executive personnel business, isn't it true that you spent almost all of your adult life in the bowling business, in one form or another?

A. That is correct.

Q. Both with Brunswick and with National Bowl-O-Mat, is that right?

A. That is so, yes.

Q. And also as an independent proprietor?

A. Independent proprietor.

Q. Can you describe the bowling industry, in terms of its economic prosperity as it existed at the time when AMF came out with the first automatic pinsetter?

The Court: Tell the jury when that was, if you know.

Mr. Hoffmann: The mid 1950's.

The Witness: About 1955 I believe they introduced their first automatic pinspotter.

A. The industry at that time—I might describe it by saying it was still in its infancy. It had not reached the proportions that took place after the introduction of the automatic pinspotter. There

[1214]

were a number of very fine centers throughout the country, but it still had not grown in size. And the growth took place after the introduction of the pinspotters—pinsetters.

Q. Well, after the introduction of the pinspotter, was there any marked change in the economics of the industry, as you saw it?

A. Yes. One of the problems that the bowling industry had faced prior to the introduction of the pinsetter, the automatic machine, pinboys—we had pinboys setting pins.

And they were very difficult to secure. It got to the point on occasion where many, many lanes at different times during the evening would be shut because they didn't have adequate help to cover them.

Q. Would you bring your voice up a little bit?

A. Yes. And with the introduction of the machine, this changed the picture completely.

It also changed the picture from the standpoint of the type of investors that began coming into the business. It brought in lots of money into the industry, people with lots of financing, who were willing to invest huge sums and put up very beautiful places.

And as a result of that, the industry expanded very rapidly.

[1215]

Q. When was that period of time that you are describing what might be called a boom period in bowling?

A. I would describe the period from 1956 through 1961, perhaps, or '62, as a boom period, yes.

Q. And then when you get to '61 or '62, what happened?

A. Well, people looked at the bowling business as a "get rich quick" thing and everybody wanted to get into the bowling business. And the manufacturers apparently were very willing to accommodate as many as they could.

And a very severe overbuilding situation took place. Centers were being put up that shouldn't have been put up, with the result that the industry became overpopulated with equipment, facilities.

The Court: Set a time, Mr. Mendelson. '61, '62?

The Witness: From about '60 on I think the situation became very, very critical. And the fruits of it began to develop in '62, when the picture changed drastically.

[1216]

Q. Then when you say it changed drastically, are you referring to a change from the prior—

A. Sir?

Q. Are you referring to a change from the prior boom period?

A. Yes, the business began a downturn. Not so much that the business turned down, it was the fact that the number of bowlers was divided up among too many centers. I would say the popularity of bowling held high, but the amount of equipment available far outstripped the number of bowlers, proportionately.

Q. And from your experience in this industry, can you isolate in some way what you feel was the main cause for this downtrend?

A. I think I just described it. It was an overbuilding in bowling centers.

Q. Overbuilding, is that what you're saying?

A. Yes.

Q. And for how long did this down curve persist, how long did it continue?

A. Well, actually, the downturn existed until possibly late '69, early '70, when we began to see a change, a little improvement.

Q. Do you have any explanation for that change that took place in late '69 or '70?

[1217]

A. Well, in the years between '63 or '62 and '69, there were many, many bowling centers that went out of business, many of them closed up, equipment was taken out, and in many areas they were coming back to more realistic percentages, proportionate to population. And as a result there were many centers beginning to experience improvement in their business, those that stayed in business.

Q. Do you have, from your experience in bowling, any index that you could give us of what you think is a healthy relationship between population and number of bowling lanes in a bowling area?

A. Well, I would certainly say that at a minimum—or a maximum—one lane for every 1500 people.

Q. What does such relationship, one to 1500, mean in your mind, what are you saying about it?

A. That means that one lane—there has to be 1500 people in population to support one lane—not one center, one lane.

Q. And if there are 1500 people to do it, what does that mean in terms of the economic conditions of the bowling centers in the area?

A bowling center should be able to prosper with that kind of a ratio.

Q. Assuming a ratio of 900, or 950 to one

[1218]

lane, is that a relationship which, in your experience, can support a healthy economic bowling—I'm sorry about the sentence—prosperous bowling?

A. From my experience, and in my opinion, I would say that would be an extremely disastrous, unhappy situation.

Q. And if you get to, say, a figure of a thousand to one, is that below a healthy economic relationship between lane and population?

A. I can only answer that, Mr. Hoffmann, by stating that I would not consider going into an area myself, into the bowling business, with a ratio of less than 1500 to one.

Q. You did go in the bowling business, did you not—was that in '58, '59?

A. Yes, sir.

Q. And where was that, again?

A. Pennsauken, New Jersey.

Q. Do you have any recollection of any studies being made at that time which would relate the population of that bowling area to the number of lanes available?

A. In making projections and surveys myself—and it was part of my responsibility, at one time—at that time I believe we were using a ratio of one to

[1219]

somewhere between 2500 and 3,000 population.

Q. Do you have any recollection of the peak of the lineage reached by your bowling center in Jersey in '58, '59?

A. Yes, I was very fortunate. I had a center that was probably one of the highest in the country from the standpoint of games per lane. We were running in the vicinity of 20,000 games a year per lane.

We had over 600,000 lines on 32 lanes.

Q. Does that mean your center was open 24 hours a day?

A. We operated around the clock, never closed the door; yes, sir.

Q. And for league bowling, when was your first shift, Mr. Mendelson?

A. Our first shift was at 6:30.

Q. And your second shift?

A. At 9 o'clock.

[1220]

Q. Was the first shift full, league bowlers?

A. Yes, we were full.

Q. And the second shift, was that full?

A. We were full on the second shift.

Q. Was there yet another shift of league bowlers?

A. We had morning leagues, we had some afternoon leagues, we had midnight leagues.

Q. What about the town in which the center was located, what was the name again?

A. Pennsauken.

Q. Is that a "going to bed early" town, would you say?

A. Well, I wouldn't say it was a "going to bed early" town.

Q. Would you call it a typically "stay up late town, or is it like any other town?

A. Just like most of the towns, there are always a certain number of people in every town that stay up late.

I don't believe it is a "going to sleep" town.

(Discussion off the record.)

Q. Mr. Mendelson, how about your center in Philadelphia, what was its experience in respect of—

A. By the time we opened up our center in Philadelphia, the building of new centers increased very rapidly in the

[1221]

area, and, well, we had a very—while we had a very, very outstanding location, very lovely center, our experience

was not quite as good as it was at the other center in Pennsauken.

We were running about 15,000 lines per lane, which was still a profitable operation.

Q. Do you have any recollection of the relationship between population and lanes there in that bowling area?

A. Well, Cottman Lanes was in the City of Philadelphia itself and we had a rather large population to draw from.

We were in the northeast section of the city, a middle class to above middle class earning area, and there were hundreds and hundreds of thousands of people living in that area.

Q. Well, is there any way of correlating in your mind the population with lanes in terms such as——

A. Yes, I'd say we were well over 3,000 people per lane.

Mr. Hoffmann: Your Honor, could I suggest a very brief recess?

The Court: Sure. Members of the jury, short recess, please.

(Short recess.)

By Mr. Hoffmann:

[1222]

Q. Mr. Mendelson, I show you Plaintiff's Exhibit 1-A, and I state to you that the evidence shows that this exhibit was prepared by Mr. Lieblich and others working with him.

Can you see this first heading, "Brunswick's Customers," and "Depreciation" beneath it?

A. Yes, I can.

Q. Note the heading "Depreciation and Charges for Determination of Net Income by Brunswick BCOD Centers for Pinsetters and Lanes and by Brunswick's Customers."

Do you understand that?

A. Yes, I do.

Q. Now, under "Depreciation for Brunswick's Customers," there is a line that says, "Pinsetter, $8100."

Your testimony, I believe, a little while ago was you thought that the pinsetter sold for perhaps a little less; is that right?

A. I believe I said about $7800.

Q. Well, do you know whether this is a fairly accurate figure, $8100?

A. I would say yes.

The Court: For the purposes of the question you would accept that, right?

[1223]

The Witness: Yes, I will.

Q. All right. With respect to the lane, do you see here the item listed—I'm sorry—at $4500? Do you see this item here?

A. I see it.

Q. How, in relation to that, do you accept that as an averaging of price, fairly accurate picture of the price for a lane?

A. I would say it is a conservative figure.

Personally I sold many lanes for a higher cost than that.

Q. Higher than $4500?

A. Yes.

Q. And then noting the other item, carpet, signs and so forth, $2400, would you say does that look conservative to you?

A. I would say it is conservative, yes.

Q. It then says that the composite useful life of this equipment is 15 years. And so depreciation of $15,000 over 15 years equals $1,000 a year.

What do you have to say about the useful life part of this statement, 15 years?

A. Well, in my opinion, I would give you an example of my own centers, we depreciated for a shorter term than 15 years.

[1224]

I would say it is a very, very conservative figure.

Q. Now, if you were to have depreciated at a shorter term, wouldn't that result in a higher cost item here for depreciation?

A. Yes, sir. Depreciation is a figure that becomes a cost figure on a balance sheet, and as such on a shorter depreciation schedule you would tend to increase your costs, you'd have a greater cost factor.

Q. So that if this had been not 15, but say 10 or some lower term in years then the cost factors would be——

A. Higher.

Q. And indeed, if it were ten years we'd show another 50 per cent, wouldn't we, for depreciation?

A. Yes.

Q. As against the 15 years?

The Court: Why did you say 50 per cent? Why wouldn't it be two-thirds?

Mr. Hoffmann: Yes, 50 per cent, quite so.

Because you are then doing a calculation in which you have as your base for your 100 the 15,000 or $1,000 a year.

Now, if you have that as a base and you say $10,000, you spread over 15 years, you start with—by division—I'm sorry, your Honor is as usual

[1225]

correct. I'm sorry.

The Court: Can't you reduce it to a ten-year item?

Mr. Hoffmann: The figuring I did was wrong in my head. That's not an unusual experience for me.

The Court: You are saying $10,000 at 15 years, right? It is really $15,000 in ten years; is that right?

The Witness: Yes, sir.

Mr. Hoffmann: Thank you, your Honor. I'm sorry. I didn't use this thing that I found

Q. But the effect of it would be——

The Court: You also found the computer in the meantime, right?

Mr. Hoffmann: I say I had it here. I should have used it.

I am not fully with the "now" generation, Judge.

[1226]

Q. Now, but that would have meant that the cost would be higher for the independent proprietor than we indicate on Plaintiff's 1A; is that right?

A. That's right.

Q. Can you conclude, then, from what you have just testified about, that this is a conservative expression of independent proprietors' cost?

A. I would absolutely say yes, it is conservative presentation.

Q. That's true not only because of the obvious 15 year factor, but it is also true, is it not, because your testimony is that the lanes you sold were frequently at a higher price?

A. That is also correct.

Q. Now, addressing your attention to all of this, you note the next heading is for interest.

Do these figures, just looking at them quickly, accord with your own knowledge about the Brunswick customers dealing with Brunswick?

For example, the pinsetter is listed as $1748 over eight years or $218 a year. That's eight years, is what governs the amount per year, is it not?

A. Yes. I believe that's a correct figure.

Q. Do you know where the eight years comes from?

[1227]

A. Well, that was the eight years, was a payout period for pinsetters.

Q. In the contract?

A. Yes.

Q. And the same way down here, five years for—

A. That was the payout period for the lanes.

Q. And the contracts?

A. Yes.

Q. Now, did there come a time, Mr. Mendelson, when you became aware that Brunswick was going into the business of operating bowling centers?

A. I believe it was in 1965, perhaps.

Q. Do you have any recollection of the circumstances which made you aware of that fact?

A. Yes. There was a large chain in existence at the time called AIBC, I believe. They were perhaps the largest chain operated group of centers in the country, and they had gotten into rather difficult straits, and I had heard at the time that Brunswick was then contemplating, they went into bankruptcy, and Brunswick was starting to take some of them over and operate them.

Q. Did you have any other source of information that you can recall which informed you of

[1228]

Brunswick's going into the business of operating bowling centers?

A. Yes. I had made a trip to Pueblo, Colorado, to visit our center in Pueblo, and Mr. Kenney had indicated to me that there were some problems with Belmont Lanes, one of our competitors, and we took a ride over to Belmont Lanes.

And I remember very specifically there had just been a sheriff's notice placed on the door, and somehow or other we got inside the building. There were people doing some rearranging or fixing, and they told us that Brunswick was taking over the operation, and they were going to operate that center.

Q. What did the sheriff's notice indicate?

A. I believe it was the sheriff—notice of sheriff's sale or foreclosure.

Q. And then when you got inside you learned that Brunswick was taking over the center; is that what you testified to?

A. Yes.

Q. When did this happen?

A. Perhaps late 1965 or early 1966. My memory is not clear at the moment.

Q. Do you have any recollection of learning of Brunswick going into the operating business in any

[1229]

other way than the ones you have just described in your testimony?

A. Yes. I was familiar with the center we had in Wappingers Falls called Holiday. There was a Brunswick-

operated center in Poughkeepsie—Dutchess Lanes, that had formerly been owned by a Mrs. Levine, and Brunswick had taken that center over.

Q. Were you familiar with the center when it was operated by Mrs. Levine?

A. I don't believe so, no.

Q. When did you first see it, do you remember?

A. Well, I believe the first time I saw the center was after Brunswick had taken over the operation.

Q. Where was the center in relation to the Bowl-O-Mat center in that area?

A. Oh, I believe less than 15 minutes away on a thruway, they had a new thruway you would take to that center, within 15 minutes automobile ride.

Q. Now, apart from what you have already testified to, that is to say, the Pueblo-Belmont relation, the Dutchess Lane situation in the Poughkeepsie area, did you have any other sources of information—let me change the question.

Did you learn of Brunswick going into the operating business in any way other than what you have

[1230]

already described in your testimony?

A. If I might go back to the previous question for a moment. In addition, of course, we had had a center in Paramus, New Jersey, and still do, and there was a Brunswick-operated center in Fair Lawn.

There was a Brunswick-operated center in Ramsey, there was a Brunswick-operated center in Lodi.

I believe that finishes my—

Q. Did you become familiar with the Bowl-O-Mat operation in Puerto Rico?

A. Yes, I was familiar with our operation in Puerto Rico.

Q. The name of that center was what?

A. You're referring to our center?

Q. Yes.

A. Paradise.

Q. And to your knowledge, did Paradise have any competition in the Puerto Rico area?

A. Yes, we had one other competitor in the Puerto Rico area, in San Juan.

Q. What?

A. A center called Star, Star Bowl, I believe is the correct name.

Q. Do you have any knowledge of the credit practices of Brunswick in relation to the Bowl-O-Mat

[1231]

center, Paradise, in San Juan, Puerto Rico?

• • •

The Court: Answer that yes or no.

A. Yes.

Q. What is your knowledge, what do you know about that?

A. Our center was on a c.o.d. basis. Anything we purchased from Brunswick was on a cash basis.

• • •

[1233]

Q. Mr. Mendelson, I would like to show you Plaintiff's Exhibit 11. There is no number on it, but that is Plaintiff's Exhibit 11. Would you be good enough to address yourself to the top line, the line that says "Bowling."

Are you familiar with the calculations here?

A. Yes, sir.

Q. Would you look along that line, and you notice that in 1968 it shows a bowling income of $148,670, and

then after the addition of shoe rental, and the like, a total of $283,902; do you see that?

A. Yes, I do.

Q. When you go along the line, to 1969, what do you have?

A. Do you want me to read that separately?

[1234]

Q. The top line.

A. $141,620, bowling.

Q. That's only about $7,000 different from the previous year, is that right?

A. That is correct.

Q. And then you go to $165,707 for 1970, is that right?

A. That is correct.

The Court: Will you just clarify it and say you are testifying about Holiday in Puerto Rico?

Mr. Hoffmann: About Holiday Bowl-O-Mat. Plaintiff's 11, which is Holiday Bowl-O-Mat in Wappingers Falls.

Q. Now, Mr. Mendelson, did there come a time when Dutchess Lanes ceased to do business?

A. Yes, I believe in 1969—the end of 1969.

Q. Do you know if anybody took over Dutchess Lanes at that time?

A. No, I believe it was closed up completely.

Q. Do you know if any new center rose up to take its place?

A. No, there was nothing I knew of took its place in the form of a new center.

Q. In that Poughkeepsie market area, do you know whether or not in that area the number of centers are

[1235]

now—compared with 1968—reduced by one, that is to say, reduced by Dutchess?

A. I believe so, yes.

Q. Now, then, would you look to see what happened in 1970 on the bowling line?

A. Did you say 1970?

Q. Yes, 1970.

A. Yes, an improvement in bowling revenues of approximately $24,000.

Q. And that is based, is it not, on a figure which is at August 31, for the fiscal year, is that what this chart reflects?

A. That is correct.

Q. And then you go to 1971. You then have an item of $198,421, is that right?

A. Yes, that is the top line, bowling.

Q. That would reflect, wouldn't it, at least a full year after the closedown of Dutchess?

A. Yes, it would.

Q. Can you compare that with the bowling income for the year before Dutchess closed down? That would be 1968, would it?

A. Additional revenue of approximately fifty-four thousand—$50,000, bowling revenue.

[1236]

Q. Then you go finally to 1972, the top line, which is bowling revenues, as well?

A. $226,122.

Q. And then on the bottom line, where the additions are made for shoe rental, snack bar, bar, and so on, is what in 1972?

Mr. Hoffmann: Can we have P-11, please, is that up?

A. It would be approximately an additional $200,000.

Q. Approximately $200,000 over the pre-Dutchess demise figure; is that right?

A. I'm sorry, I didn't understand the question.

Q. Well, you said the 1972 top line is $226,000?

A. Yes.

Q. The bottom line, $429,348?

A. Yes. The figure I stated was the difference between the 226 and the 429.

Q. Comparing the 429,348 figure now with the figure which reflects the last year in which Dutchess was alive or functioning.

A. That would be 1968.

Q. And the bottom line for 1968 is what?

A. $283,902.

Q. Just roughly doing the arithmetic, about how much of an increase from 1968 to 1972?

[1237]

A. Approximately $146,000.

Q. $146,000 from 1972 to 1968.

How do you account for that increase?

A. There was one less center in the area.

Q. And spelling it out, what happened when there was one less center in the area?

A. Well, the bowlers go the other centers available, they first pick out the best center, and approximately—well, they go some other place to bowl.

Q. And you explain this increase in terms of increased patronage of the Wappingers Falls Holiday Bowl-O-Mat center resulting from the demise of Dutchess; is that what you are saying?

A. Yes.

Q. Now, would you be good enough to look at Plaintiff's 53 in evidence.

Do you see the entry for Holiday Bowl-O-Mat?

A. Yes, I do.

The Court: Give him the court exhibit.

Q. Now, Mr. Mendelson, you see this entry here, the overall entry, "Damages to four of plaintiff's centers"; is that so?

A. Yes.

Q. Now, this entry, "Additional annual bowling revenues," what does that mean, what does that reflect?

[1238]

A. That would indicate the additional revenues that would accrue to Holiday with the closing of Dutchess County—Dutchess bowling center.

Mr. McNeill: Excuse me, before you put another question, Mr. Hoffmann, I might observe that the witness hasn't stated anything about his own opinion as to what business might accrue to Holiday, and the answer——

Mr. Hoffmann: If my dear friend would be patient.

The Court: I think the objection is well taken.

I will permit opinion evidence from this witness based on his experience.

Q. Within your own experience, most of your adult life has been devoted to bowling, what do you think about this figure of 60 to 75 thousand additional bowling revenues for Holiday; is that a figure which accords with

your view as to the additional income to be received on the demise of Dutchess?

A. I would say yes.

Q. Well, in point of fact, if you'd be good enough to look again at the exhibit which shows the reality, not just the suggestion of opinion, it shows more than that, doesn't it, after Holiday retired from the

[1239]

scene—I mean, after Dutchess retired from the scene?

A. Yes, it does.

Q. A good deal more; isn't that so?

A. Quite a bit more, yes.

Q. So then would you say for this damages calculation, in your opinion, isn't that a conservative figure for Holiday?

A. I would say yes, it is a conservative figure.

Q. Now, would you be good enough——

The Court: If you stay to the left perhaps the jury will be able to see the exhibit.

Mr. Hoffmann: Sorry, it is a little awkward, your Honor.

Q. Now, going along this line, this item here, this is the item of net income per thousand dollars bowling revenues, it comes out to $1,328.

You testified about that before the luncheon recess, did you not?

Is it your opinion that that is conservative, or too high?

A. I'd say that's conservative.

Q. And so this is a conservative figure in your opinion; is that right?

A. That's right.

Q. This is a conservative figure?

[1240]

A. Yes, sir.

Q. And then you get a multiple of two conservative figures, and you get some $79,680 to $99,600; is that right?

A. I would say yes.

Q. Now, do you know what this reference here under Number of Years where damages are claimed for Holiday Bowl-O-Mat, first day, 12/10/65——

A. That would be the year that—for the years starting where damages are claimed.

Q. Do you know what the second date is, 8/31/69?

A. That would represent the year that the Dutchess Lanes ceased to exist.

Q. So the figure stops with the end of Dutchess; is that right?

A. Yes.

• • •

[1242]

Q. • • • Now, would you be good enough to take a look at the next entry, which is Paramus.

You are the manager, aren't you, in Paramus?

A. Yes, I am.

Q. By the way, what Brunswick centers again are located near Paramus?

A. We have the center at Bergen Mall, Fair Lawn Lanes, Lodi Lanes, and Interstate Lanes in Ramsey.

Q. Can you tell us approximately how many lanes each of these centers has, do you know?

A. Yes. I believe Bergen Mall has 36 lanes.

[1243]

Q. By Bergen Mall, are you referring to Ten Pin?

A. Ten Pin on the Mall, yes.

Ramsey I believe has 40 lanes. Fair Lawn Lanes, 36—I may be wrong on the 36.

Q. Do you know whether you recall them with any precision; do you have a precise recollection of the number of lanes of the different Brunswick centers that you mentioned?

A. Yes.

Q. You do have?

A. I am not sure about Fair Lawn. I thought it was 36.

Q. How about Lodi?

A. 40 lanes, I believe.

Q. Interstate?

A. 40—Interstate.

Q. Do you know pretty much the distances between Paramus center and these four Brunswick centers you named?

A. Yes, I believe, taking the one that is the longest distance from Paramus, that is approximately seven and a half miles, perhaps. I believe Fair Lawn——

Q. Did you identify that one?

A. That's Interstate Lanes in Ramsey.

[1244]

I believe Fair Lawn Lanes is around three to three and a half miles perhaps.

Bergen Mall or Ten Pins on the Mall would be within a half a mile, and Lodi Lanes possibly just over five miles.

[1245]

Q. Tell me, how long have you been manager in Paramus?

A. Late 1970.

Q. Have you, since that time, experienced competition from these four Brunswick centers that you have mentioned?

A. Yes, I have.

Q. Do you know, or can you remember any specific example of Brunswick competition, since you have been manager of the Bowl-O-Mat center in Paramus, which was particularly hurtful, in the sense of causing Bowl-O-Mat Paramus to lose business?

A. No, sir; I can't name any one specific league, or any specific amount of business.

Q. Do you find that the competition that you do have with Interstate, and with Lodi, with Fair Lanes, is any more intense than with any other center in your immediate market area?

A. Yes, I do.

Q. And what is the reason for that, sir?

A. Well, in the past number of years, they have had some exceptionally effective promotional campaigns. For example, there was a trip to Europe available to those bowlers that bowled in those particular centers.

Q. Why didn't you conduct a trip to E·rope

[1246]

campaign yourself?

A. Well, it is a very expensive promotion.

• • •

Q. I show you Plaintiff's Exhibit 13 in evidence and ask you, if you will, to look at the bottom line.

This exhibit has to do with income and loss of Bowl-O-Mat Paramus, is that right?

A. That is correct.

Q. Looking at the bottom line, do you see—other than for the year 1961, '62 and '64—any positive income coming to Bowl-O-Mat Paramus?

A. No, in every year, with the exception of the three you mentioned, there was a loss.

Q. And going after it, from the last positive year, '64, the loss increases, does it not, through the period '64, '65, '66, '67 and '68, is that correct?

A. That is correct, sir.

[1247]

Q. Then a slight tapering off, if you look at it, for the year 1969, ending the fiscal year August 31, is that right?

A. Correct.

Q. Any explanation for that, for the tapering off?

A. Well, I believe '69 began to show a little—or a general sign of an upturn in the bowling business.

Q. But then the next year is about the same, isn't it, indeed a little bit more in loss, $55,153?

A. Yes.

Q. And finally, you go down a little in '71, and down to $10,542 in '72, is that right?

A. That is correct.

Q. Any explanation for the improvement in the loss in the year ending 8/31/72?

A. Well, I think the general upturn was beginning to gain more momentum.

Q. If you will, would you just quickly take a look here at P-15, which shows the Bowl-O-Mat Paramus figures; do you see here the net income, cost of goods and labor, items down here; then an average figure; does your opinion or knowledge say that those are accurate calculations?

A. Yes.

[1248]

Q. And then quickly going to the bottom of the page, for each additional thousand of bowling revenue, net income increases; it ends—without going through each calculation—ends with $1,140, is that right?

A. That is correct.

Q. Does that accord with your knowledge of the Paramus, New Jersey operation?

A. Very definitely, yes.

Q. Do you have 53 in your hand?

A. Yes, I do.

Q. Would you look at it, please?

Your first column is additional annual bowling revenue for Paramus Bowl-O-Mat. Can you tell us how those additional revenues are calculated?

A. The additional revenues are calculated based on what would happen in the event—for example, in Paramus if Ten Pins on the Mall closed, Fair Lawn Lanes, perhaps, in the case of Pueblo, they would reflect figures in the event that Belmont—

Q. I am talking now only of Paramus.

A. Yes.

Q. This is based on the premise that the Brunswick centers in the competitive market were closed up.

[1249]

A. That would be correct.

Q. And what about the additional annual bowling revenue which that circumstance would afford; in your opinion, is that an accurate estimate of such additional revenue?

A. In my opinion, it is, yes.

Q. Do you know whether that is on the generous or conservative side?

A. That is on the conservative side, sir.

Q. Why do you say that?

A. Well, I believe—apparently Paramus Bowl-O-Mat, in terms of lineage, is doing something in the vicinity of

8900 lines per lane. A good operation, nothing exceptional, would be somewhere in the vicinity of 15,000 lines per year per lane, which means that we would have opportunity to pick up an additional 6,000 lines per lane, or close to it.

If we multiply that by 36 lanes, we would have over 200,000 lines of bowling, additional. And if we take that and multiply it by the average rate, around 63 cents a line, I think we come to that figure, very close to it.

Q. Without doing it exactly—what you are doing is multiplying 63 cents per line by 200,000?

A. Yes.

[1250]

Q. This multiplication would place your figure well above—whatever it might turn out to be—well above 100,000 a year, is that right, and indeed above $120,000?

A. Yes, sir.

Q. Once again for Paramus, $1,140—we went over that before.

A. Yes.

Q. In your opinion, that is not—

A. A reasonable figure.

Q. That is a reasonable figure. And from then on, there is the multiplication, which brings this year to 136, bottom line, 159,000, top line, and then spreading it across the period of claimed damages, eight years, it goes to $109,440, or the larger figure, to $1,276,000.

Address yourself to Pueblo, please. Do you have Plaintiff's Exhibit 8 in your hand, which is the income or loss sheet for Pueblo Bowl-O-Mat?

A. No, I don't.

[1251]

(Document handed to the witness.)

Q. You now have Plaintiff's Exhibit 8 in your hand?

A. Yes, I do.

Q. And that is the income loss sheet for Pueblo Bowl-O-Mat, is that right?

A. That's correct.

Q. Now, just quickly running across the bottom line, which shows income or loss, the bottom line starts with the fiscal year ending 8-31-61, is that right?

A. That is correct.

Q. And it ends with the fiscal year ending 8-31-72, is that right?

A. That's right.

Q. What is the income loss experience; can you give us the general characterization of that bottom line for Pueblo?

Mr. McNeill: Your Honor, the figures speak for themselves. This general impression as to what the bottom line suggests is not going to be competent testimony.

The Court: I will permit him to testify as to the total.

By Mr. Hoffmann:

Q. What is the total?

[1252]

The Court: For that period of time.

A. For the fiscal year ending '72—from 8-31-61—a total of $511,200, loss.

Q. And it's a loss in every year, is it not?

A. In every single year, yes.

Q. Looking again at P-53, damages to centers, additional annual bowling revenues, the last entry here is

Pueblo Bowl-O-Mat. The additional annual bowling revenues is computed at $90,000 to $100,000.

In your opinion, Mr. Mendelson, is that a reasonable or fair figure?

A. In my opinion, it is a reasonable, conservative estimate.

Q. You say conservative?

A. Yes, sir.

Q. Do you have any reason for calling it conservative?

A. Pueblo Bowl-O-Mat had ample facilities available, in the event Belmont closed, to do that kind of business. And based upon the kind of a center Pueblo Bowl-O-Mat represents—it was the outstanding center in Pueblo, it had the best facilities, pretty much centrally located, and would normally get the major share of the business available from the closing of the center.

Q. And this figure of—I'm sorry—this figure

[1253]

of $1,109, the bottom, underneath income per thousand bowling revenues, can you tell us whether or not that is a reasonable figure?

A. I would say it is a reasonable figure, yes.

Q. And then the rest is simply an application of the skill of multiplication. The figure is multiplied, so we have $99,810 to $110,900, the years for which damage is claimed from '63 to 4-1-73, gives a grand total of $964,830 to $1,072,000.

We can do a little more than make assumptions, can we not, as to what happens when the competitive Brunswick center—I'm sorry—when a competitive center closes, is that right?

A. That's correct.

Q. And why do you say that is correct, is it because of something you have already testified to?

A. Well, we have had the experience in Holiday, Wappingers Falls.

[1254]

Q. When you say "the experience," what do you mean?

A. A center did close.

Q. That is Dutchess center?

A. Yes.

Q. And the experience is what you described before in your testimony?

A. Yes, the actual experience, the figures are available.

Q. Now, do you have any knowledge of what has happened in San Juan since Star has closed in terms of the Bowl-O-Mat center there?

A. Yes, there has been a very dramatic increase in revenues.

Q. I address your attention to Plaintiff's Exhibit 21. Do you have that in your hands?

A. No, I don't.

Q. Do you know about when Star closed down?

• • •

[1255]

A. (Continuing.) I believe Star ceased to exist as a going business in October of 1972.

Q. Is this the column which would reflect that?

A. Yes, sir.

No, I am afraid it would not. I believe these figures represent fiscal figures ending August 1972, and Star didn't go out of business officially until October.

The Court: What did you say?

The Witness: They didn't cease existing, they went out of business in October, I believe.

Q. Do you have any knowledge of the condition of Star Bowling during the years ending, fiscal years ending 8/31/71 and 8/31/72?

A. I personally never—I didn't visit Star in the years listed, '71, '72, but I heard from a number of people that it was in horrible condition——

Mr. McNeill: I move that that portion of his answer be stricken. It has to do with hearsay.

The Court: So ordered.

Q. What was your function in 1971 in the Bowl-O-Mat companies?

A. I was manager of Paramus Bowl-O-Mat.

Q. Did you as manager get any regular reports as to the well-being of the other Bowl-O-Mat centers?

[1256]

A. Yes, I would say so.

Q. Can you tell us now whether you have any knowledge derived from within the bowl-O-Mat organization on a recording basis of the earnings of Bowl-O-Mat's Paradise center in San Juan, Puerto Rico, during the period of time just elapsed, the first three months of 1972?

Do you know anything about that?

A. Well, Mr. Davis, the director of operations for the company, we had a discussion, and he did tell me that there was a dramatic improvement in the revenues of Paradise.

The Court: Just a minute. Your adversary is standing.

Mr. McNeill: I move to strike that portion of the answer, which is nothing but hearsay. Whatever Mr. Davis said outside of a representative of Brunswick is hearsay.

The Court: Why should I permit it, Mr. Hoffmann?

Mr. Hoffmann: Your Honor, here is a manager of one of our ten centers. It is suggested by his testimony that he met with Mr. Davis. Mr. Davis is the vice president of the entire operation.

And that he has derived knowledge about the

[1257]

profitability of the other centers.

The Court: From what Mr. Davis told him, but Mr. McNeill does not have the opportunity to cross-examine Mr. Davis.

Mr. Hoffmann: He will have that opportunity before the day is out.

The Court: I will permit it with that representation, or else I will order it stricken.

(Record read.)

The Court: I will let it remain.

By Mr. Hoffmann:

Q. I want you to look once more at Plaintiff's 53. Do you have it in your hand? That's the document entitled "Damages to Four of Plaintiff's Centers."

Addressing yourself to Paradise Bowl-O-Mat, you notice the span of years in which the damages are claimed, this is the next-to-the-last column, number of years?

A. Yes, sir.

Q. Do you notice the last date in which they are claimed?

A. August 31, 1970.

Q. Do you know why our claim for damages for Paradise stops at that date?

A. To the best of my knowledge, at that point Star

[1258]

ceased to exist as a competitor.

Q. How do you square that with which you said a moment or two ago about its final stoppage?

A. Well, there is a—I believe a period between them stopping to exist as a competitor and their actual closing of their doors.

Q. And the actual closing of the doors, your testimony was, took place not long ago; is that right?

A. Yes.

Q. And are you saying by your testimony that during that period from August 31, 1970, to the end of 1972, Star was no longer a meaningful competitor; is that what you said?

A. Yes.

Q. Do you know why that should be so?

A. The center has fallen into such state it no longer was a bowling center in the actual sense of the word.

Q. When you say "fallen into such state," can you explain that any further than just that phrase?

A. Yes. Machines, pinsetting machines weren't operating properly, the lanes were not maintained, the center itself was almost not habitable.

Mr. Hoffmann: Your witness, Mr. McNeill.

• • • •

[1289]

CROSS-EXAMINATION (Continued).

By Mr. McNeill:

Q. Mr. Mendelson, I would like to hand you Plaintiff's Exhibit 1-A for just a moment. The top part

[1290]

of that exhibit, and the bottom part, have entries after the caption "Depreciation," do they not?

A. Yes, sir.

Q. Do you know, sir, whether depreciation is a cash expense or not?

A. No, it is not.

Q. Does Exhibit 1-A, Mr. Mendelson, demonstrate to you any Brunswick BCO advantage in operating a center over Holiday Bowl-O-Mat?

A. My exhibit doesn't show any Holiday listing.

Q. No, it does not. In fact, yesterday you testified that the Holiday had AMF equipment and isn't even a Brunswick customer, isn't that correct?

A. I think I did, yes.

[1291]

Q. So the exhibit has nothing to do with the Holiday Bowl-O-Mat, does it?

A. Not to the best of my knowledge.

Q. What about your prior center named Eldorado? Does this exhibit have any application whatsoever to Eldorado and Brunswick BCO operations?

A. No. In my center I had an interest charge, and my depreciation was higher.

Q. And you purchased the center when, sir, in 1956?

A. In 1956, yes.

Q. And at 20,000 lines per lane the equipment would have been paid for in four years?

A. Approximately four years.

Q. Does this exhibit have any application in Paramus with respect to Mr. Esposito's center containing AMF equipment, just up the street from Paramus Bowl-O-Mat?

A. Insofar as Mr. Esposito has AMF equipment, in that regard it wouldn't. What Mr. Esposito's accounting practices are, I don't know.

Q. Mr. Mendelson, how long were you an employee of Brunswick when you were over in Zurich, I believe you testified?

A. From approximately August through the end of May

[1292]

or June 1963, 1962, 1963.

Q. From August, approximately, 1962, to May-June 1963?

A. Yes.

Q. Then you rejoined Bowl-O-Mat?

A. Not immediately. I rejoined—I didn't rejoin Bowl-O-Mat. I originally joined Bowl-O-Mat in August of 1963.

Q. So you were with Brunswick at that time for approximately 10 months?

A. Um hum.

Q. Were you let go by Brunswick on that occasion?

A. No, sir.

Q. What were the circumstances of your termination?

A. We had a friendly termination, difference of opinion, and I resigned.

Q. You testified the other day about the manufacturing costs of Brunswick's automatic pinsetting machines?

A. Yes, I did.

Q. And you indicated that there was a cost of $1,900 for a machine manufactured in Berlin, I believe?

[1293]

A. That's correct.

Q. To your knowledge, did any foreign made automatic pinsetters manufactured in Berlin ever enter the American bowling market?

A. Not to the best of my knowledge, no.

Q. With respect to domestic United States manufacture of Brunswick automatic pinsetters, your testimony was that the manufacturing costs was $2200?

A. Approximately $2200.

Q. What does that mean, manufacturing costs?

A. The cost of the machine, to put the machine together, and the Brunswick cost from the standpoint of material and manufacture.

Q. Are you an accountant, sir?

A. No, I am not.

Q. Have you ever been employed in the Brunswick Accounting Department?

A. No, I have not.

Q. Or the Bowl-O-Mat Accounting Department?

A. No, I have not.

Q. Do you know whether the manufacturing costs that you are talking about includes such expenses as warehousing or transportation?

A. No, I don't.

Q. I'm sorry, what does your answer mean;

[1294]

does it mean that the manufacturing cost you gave us does include it, or does not include it, or you don't know whether it includes it?

A. I don't know whether—I don't know if it would include it.

Q. What about the cost of installation, for example, the cost of installing pinsetters in your Eldorado center, is that cost of Brunswick included in the $2200 figure?

A. No, I believe I stated the manufacturing cost, not installation.

Q. So then it wouldn't include the initial adjustment costs or servicing costs either, would it?

A. No, it would not.

Q. Nor would it include Brunswick's research and development costs or engineering costs?

A. I wouldn't think so, no.

Q. Nor would it include sales and promotional costs, would it?

A. No, it would not.

Q. Or the general corporate servicing costs, costs for the accounting department, the legal department, the credit department, and so forth?

A. I couldn't answer that. I wouldn't know.

Q. Do you know, sir, whether that 22 figure

[1295]

reflects any costs on the money Brunswick borrowed in order to be in the bowling business?

Mr. Hoffmann: Your Honor, I am going to object to further questions along this line.

The witness—the line was started by the witness saying he doesn't know about these costs.

Now, Mr. McNeill asks as to specific items does he know about each one of these items, was it included or was it not?

Obviously, the answer includes the answer to all of the questions which follows.

It seems to me this is not cross-examination, it is just an effort to try to suggest to the witness that he doesn't know anything at all.

He said he doesn't know whether it is included in the manufacturing cost.

The Court: Except in direct examination he stated the manufacturing cost was $2,200, I believe.

Mr. Hoffmann: Yes, but he said now on cross that he doesn't know whether these various items which Mr. McNeill mentioned are included or not.

He said, "I don't know," in answer to a

[1296]

broad question which started the line.

Now, Mr. McNeill could go on all day asking him whether or not the cost of sponging the floors of Brunswick are included, whether the cost of research and technology for Brunswick surgical instruments are included, and so on, but he just doesn't know, he said so.

Mr. McNeill: With great respect, I think this is certainly proper cross-examination. Mr. Hoffmann, for whatever reasons, had this witness speak as to the cost of a Brunswick automatic pinsetter, and I am certainly entitled to find out what he knows about the manufacturing costs, this sales costs, and all of the other costs.

He has said in answer to my questions that he knew that the $2200 figure did not include many of the costs I asked about.

I am through with this line of questioning, as a matter of fact, but I think it is perfectly proper to inquire and to let the jury and this Court know precisely what is not included in that figure.

The Court: I will permit it. Proceed.

Q. Mr. Mendelson, you are quite familiar with the Paramus Bowling market, are you not?

[1297]

A. Yes, sir.

Q. Are you familiar with the center named Montvale, Montvale Lanes?

A. Very, very vaguely. Montvale would not be what I would consider the trading area that we are in.

Q. You think that in your opinion Montvale is outside of your market area?

A. I believe so, yes.

Q. Is it closer, or further away, from your center than Lodi Lanes?

A. I would say it is further than Lodi.

[1298]

Q. Is it closer, or further, from your center than Interstate Lanes in Ramsey?

A. Might be very close to the same distance.

Q. Do you know whether Montvale has A-2 fast return equipment?

A. I don't know that.

Q. Do you know the center named Lucky Strike in Emerson?

A. Yes, I have been in Lucky Strike.

Q. Do you consider that competitive with your bowling center?

A. No.

Q. Is that further away than Interstate from your center?

A. Possibly about the same distance.

Q. And do you know whether or not Lucky Strike has A-2 equipment?

A. I don't know.

Q. What about Martone's lanes, do you consider that bowling competitive to yours?

A. Yes, I would.

Q. And do you know whether that center has A-2 equipment?

A. I don't believe it has.

Q. Mr. Mendelson, you testified the other day

[1299]

concerning a promotion prevalent at the BCO houses in your market area involving a bowler's trip to Europe, did you not?

A. Yes.

Q. Can you name any bowler, bowlers, teams of bowlers, or leagues, which your center has lost to a Brunswick operated center because Brunswick had this bowl to Europe promotion?

A. No, I can't specifically name any one bowler or league.

Q. Have you lost any leagues for that reason?

A. Not to the best of my knowledge.

Q. Do you have any knowledge as to the expense to Brunswick for running that promotion?

A. No, I wouldn't be—I would have no information on that.

Q. Do you know how many how many bowlers end up going to Europe from the entire United States?

A. No, my memory serves me, it is possibly three or four, perhaps.

Q. If I suggested two, would that accord with your memory?

A. It could be correct.

Q. Mr. Mendelson, in the face of this Brunswick promotion, the Bowl-Your-Way-to-Europe, that occurs in

[1300]

Ten Pins and Fair Lawn, have you over the past year been able to build up the business at Paramus Bowl-O-Mat?

A. I would say I have been able to increase dollar volume, yes.

Q. Almost $50,000 last year, didn't you?

A. Approximately.

Q. Mr. Mendelson, turning to the subject of the claimed damages by the four plaintiff centers, the hypothesis for this estimate of additional bowling revenues to a plaintiff center is that the Brunswick-operated center is out of business and that the equipment has been taken away, is it not?

A. I believe so, yes.

Q. And what happens when a center is removed from a competitive area; is the competition increased, or is it decreased?

A. Well, it not necessarily is not decreased. Decreased in the sense that there is less equipment available, perhaps, but if an area has other facilities there is still competition.

Q. My question, sir, goes to the impact, if any, in a competitive area when one center is closed.

A. Well, generally the other areas benefit by the closing of one center.

Q. Isn't competition in that market area

[1301]

increased, or decreased, therefore?

A. Well, I would on that basis say it is decreased.

Q. So in Pueblo, for example, if Belmont were closed, according to the hypothesis, the competition would be decreased?

A. The competition would be decreased by the closing of one center, yes.

Q. Now, in talking about Holiday in Poughkeepsie, Dutchess Lanes which was operated for a while by Brunswick's BCO operating division, was closed in mid-1969; isn't that correct?

A. I believe that was the date.

Q. And I believe you indicated—strike that.

Did you indicate that the revenues at Holiday Bowl-O-Mat increased after Dutchess was removed from the market?

A. I believe the figures bear that out, yes.

Q. Do you know that for a fact without the benefit of the figures?

A. Yes, I do.

Q. You are familiar with the Poughkeepsie-Wappingers Falls market area, are you not?

A. Yes.

Q. Isn't it true that very shortly after the Dutchess center was closed, Holiday raised its prices

[1302]

for bowling a game of bowling?

A. I am not familiar with the price structure or whether or not prices were raised. We at the beginning of each fiscal year always sit down and review prices for centers.

[1303]

Q. Weren't you the director of operations in 1969?

A. No, I believe I had left the company at that point. I no longer was responsible for it.

Q. And do you know, one way or the other, as to whether Holiday promptly raised its prices after Dutchess was removed?

A. No, I—

Mr. Hoffmann: Your Honor, I object to the word "promptly." It has grown from "shortly after" to "promptly."

The Court: After.

A. I can't answer that specifically.

Q. So you don't know whether the figures you looked at the other day reflect an increase in price, do you?

A. No, I couldn't state that.

Q. In fact, you don't know whether an increase in price may have been responsible for the entire increase, do you?

A. No, except the lineage figures, I believe, increased.

Q. Mr. Mendelson, do you recall that the figures showed that Holiday's bowling revenues increased from the 1968-69 season to the 1969-70 season about $24,000?

A. I remember an increase. I can't specifically say,

[1304]

without looking at the figures, as to the exact amount.

Mr. McNeill: I am handing the witness the Court's copy of Plaintiff's Exhibit 11.

Q. Directing your attention to the top line, bowling revenues, for the years 1969 and 1970. And it was in 1965 you testified that Dutchess closed.

What is the difference between the bowling revenues in '69 and '70?

A. About $24,000.

Q. With that in mind, Mr. Mendelson, what is your judgment as to the amount of additional bowling revenues per year Holiday would receive if Dutchess were closed?

A. I would estimate that we would have received perhaps 65 per cent of the bowling volume enjoyed by Dutchess Recreation.

Q. What was your experience between '69 and '70, after Dutchess closed?

A. I was not familiar with the operation at that point. I was not involved in it.

Q. Sir, what do the figures in front of you show?

A. $24,000.

Q. Is that greater or less than the estimate of $60,000 at the top of this chart, Plaintiff's Exhibit 53?

[1305]

A. Well, actually, it is very possible that its full effect doesn't take place immediately. It might take place over a season's period.

Q. Mr. Mendelson, three years ago did you have an opportunity to estimate the amount of bowling revenue that Holiday would receive if Dutchess had been closed, at a prior hearing in this matter?

A. I believe so, yes.

Q. Can you recall what your estimate was three years ago?

A. If my memory serves me correctly, I estimated about 60 to 65 per cent.

Q. Did you translate 60 to 65 per cent, if you can recall, into a dollar figure?

A. I can't remember whether I did or not; no, sir.

The Court: What page?

Mr. McNeill: I am referring to page 1032 of the transcript from April 3, 1970.

Q. Isn't it true, Mr. Mendelson, that on that day you testified that your considered opinion would be that "we"—Holiday Bowl-O-Mat—would benefit to the tune of perhaps 30 to 35 thousand dollars in the Poughkeepsie situation?

A. That's what it says in my testimony. Of course, I was being, in my opinion, conservative.

[1306]

Q. Your opinion then was conservative?

A. I believe so, yes.

Q. What about the $60,000 opinion today?

A. Well, based on what has happened, this would be more accurate than my appraisal back in 1970 of my opinion at that time.

Q. I see. Do you remember also suggesting why the $35,000 figure was accurate by stating, "We were a little out of the way from most of the business that had been in the Dutchess center. I believe our other competitors would capture the major part of that business because of the proximity for the business at Dutchess."

Can you recall testifying to that effect?

A. Well, if it is on the record, I must have testified to that, yes.

Q. And the other competitors haven't moved their centers, have they?

A. Not that I know of, no.

• • •

[1311]

Q. And did you testify that the estimated $100,000 to $120,000 was a conservative estimate of the additional bowling revenue that would come to Paradise if Star were closed?

A. I believe I said that was my estimate.

Q. Three years ago did you have an opportunity to testify as to your opinion as to the amount of dollars in bowling revenue that would come to Paradise if Star were closed?

A. I believe I did, yes.

Q. Do you recall what you testified on that occasion?

A. If my memory serves me correctly, I believe it was somewhere around 65 percent.

Q. Do you recall whether it was translated into a dollar figure?

[1312]

A. I don't recall, sir, no.

Q. If I suggested to you that you estimated $80,000 on that occasion would that serve to refresh your recollection?

A. It is very possible, yes.

Q. I refer to page 1033 of the transcript from April 3, 1970.

(Shown to the witness.)

A. Once again, I believe my testimony was on the very conservative side. And in light of what has happened, the figures appear to be as they are related now.

• • •

Q. Now, in the Paramus market area, Mr. Mendelson, have any bowling centers closed, with their equipment taken out, during the past eight years, to your knowledge?

[1313]

A. I don't believe in the immediate market area that we are involved in, in Paramus.

Q. No centers in the Paterson area?

A. Well, Paterson is not in what I consider the Paramus market area, from the standpoint of bowling.

Q. How long does it take you, when you get in your car, from the parking lot outside of Paramus Bowl-O-Mat center, to drive to downtown Paterson Highway 80?

A. Using Highway 80, it would take me perhaps—could take me 25 minutes, a half hour, depending on traffic conditions.

[1314]

Q. What about at 9:00 o'clock for the second shift of bowling leagues, 9:00 p.m., how long would it take to get from your center to Paterson?

A. 15, 20 minutes, perhaps.

• • •

Q. In your opinion, what percentage of the bowling revenue at Ten Pins on the Mall would come to Paramus Bowl-O-Mat if Ten Pins were closed?

A. Perhaps 75, 80 per cent.

Q. And what per cent of the Ten Pins business would disappear altogether; in other words, if bowlers

[1315]

quit bowling, or decide not to go to the trouble to go to another center, in your judgment?

A. I don't believe any of the business would disappear completely.

Q. Where would the other 25 per cent go?

A. In other centers that would be in our area.

Q. Esposito's center?

A. Or where they could find facilities. It could be Esposito.

Q. What if the Lodi center closed, what percentage of that business would come to Paramus Bowl-O-Mat, in your judgment?

A. Possibly 35, 40 per cent.

Q. What about Fair Lawn, what percentage of that business would go to Paramus Bowl-O-Mat?

A. Well, in the event Fair Lawn closed, I believe our percentage would be very comparable to Ten Pins on the Mall.

Q. 75 per cent?

A. Approximately, yes.

Q. And if Interstate closed, what percentage of that business?

A. Perhaps 35, 40 per cent.

Q. And if you would apply those various percentages you have just given us to the bowling income

[1316]

done at the four centers operated by BCO at the moment, you would expect to come up with the figure $120,000 or $140,000?

A. Yes, I would say so.

Q. Mr. Mendelson, in 1965, if you were in the position of having repossessed the equipment in a bowling center that hadn't been paid for, what would you have done with it.

A. Well, that's a very broad question. Without knowing other facts, I couldn't answer that.

A. Well, you do know the facts of the 1965 bowling market, don't you?

A. Yes.

Q. Was there any market for used equipment in those days, were there ready, willing and able buyers for used equipment?

A. I don't think the market was prosperous, from that standpoint.

Q. Basically, nobody was buying equipment in those days, were they?

A. Well, there were not many, let me put it that way.

[1330]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann: • • •

The Witness: I don't understand it.

Q. Well, let me try and put it this way:

What years were you in San Juan and observing Star Bowl?

A. 1967, 1968, 1969.

Q. Now, sir, did you have any knowledge that

[1331]

conditions concerning the relationship in terms of number of customers going to the two centers was any different in the years 1965, 1966, 1967 prior to your visits to San Juan than it was during the time when you made the observation about the two centers?

The Court: Do you understand that?

The Witness: Yes.

A. No.

Q. Now, Mr. Mendelson, you were asked about the Holiday additional income in the year 1969.

Do you recall when it was that Dutchess closed down?

The Court: Refresh his recollection. Do you recall 1969?

The Witness: I believe——

Q. It was during that year, wasn't it?

The Witness: During 1969.

[1332]

Q. Now, Mr. McNeill pointed out to you in Plaintiff's Exhibit 11 that the total revenue for bowling went from $141,000 in 1969 to $165,000—I'm sorry, 141 in 1969 to 165 in 1970; is that right?

A. Yes.

Q. Holiday closed down sometime during the year 1969; is that right?

A. That's right.

The Court: Not Holiday. Dutchess.

Q. I'm sorry. Dutchess closed down during that year?

A. Yes.

Q. Do you happen to know when the fiscal year for Bowl-O-Mat ends?

A. The end of August.

Q. So these 1969 figures here reflect the end of the fiscal year; isn't that right, that is, August?

A. Yes.

Q. Now, we go to 1970, that's a year ending in August, isn't it?

A. Yes.

Q. And that shows the—for what may be a little more than a year, a $24,000 difference; is that right?

A. Yes.

[1333]

Q. Would you be good enough to look at the next year, sir, now that there has been the passage of a year, what does that show?

A. $198,421.

Q. And the difference between that figure and the figure as it existed in the year before Dutchess closed down?

A. You're referring to 1968?

Q. The same figure which you used in comparing for Mr. McNeill, 141,000.

A. Difference of $57,000.

Q. That's when you got a full year in.

Now, would you look at the next year, please. Here we have experience, don't we, as to what happened?

A. Yes.

Q. What does it show for the next year?

A. $226,123.

Q. What is that difference from 141,000, what does that amount to?

A. Approximately $85,000.

Q. And, sir, can you state in light of the experience of Holiday, whether or not the estimate you gave as to additional bowling revenues which would take place if Dutchess closed down was conservative or immodest, or is it too much?

[1334]

The Court: Did you say, "immodest"?

Mr. Hoffmann: I take that one back.

The Court: Another judge might say what kind of a case is this?

Mr. Hoffmann: That's why I tried to take it back fast.

A. I would say conservative.

Q. Because if it had reflected the actual experience, it would have shown a great deal more than what was on the chart; isn't that so?

A. Correct.

Q. Now, in relation to your testimony on cross-examination about Paradise, you notice here that we only claim damages through the fiscal year ending August 31, 1970; is that right?

A. That's right.

Q. Do you know why that's so?

A. My understanding, that's when Star ceased to exist as a going business.

Q. Well, do you know when it was that Treadway acquired those lanes and pinsetting machines?

A. I can't say for certain. I believe in October, perhaps, the lanes were removed in October——

Q. You are talking now of what year?

A. 1972.

[1335]

Q. So this pertains to 1970, doesn't it?

A. I'm sorry——

The Court: You know?

The Witness: No, I don't know why the year of 1970 is used on there.

The Court: All right.

Q. You weren't present in the courtroom when Mr. Lieblich testified concerning that matter?

A. No.

The Court: I will permit you to refresh his memory with regard to any events that might have occurred.

Mr. Hoffmann: Thank you, your Honor.

Q. The testimony was—and I ask if my reciting it serves to jog your recollection—that by that time in 1970 Star had become so run down that it was no longer effective competitively, and so we no longer felt that the continued existence of Star detracted from our getting business in San Juan, Puerto Rico.

The Court: Does that refresh your recollection?

The Witness: Yes.

Q. Now, coming to Plaintiff's 22, which shows the history of Paradise Bowl-O-Mat, do you notice that starting in 1971 that figure, I take it, is the fiscal

[1336]

year ending 8/31, would it be?

A. I would assume that would be right.

Q. We have $196,000 of bowling revenue, and that compares with the previous year in what way; what happened?

A. There is an increase of approximately $26,000.

Q. Now, if you carry back to the year just before that, the general bowling revenue is about the same, is it not, as it was in 1970?

A. Within $100, yes.

Q. Now, you go up approximately $26,000, did you say?

A. Between 1970 and 1971.

Q. And you go up again in 1972; is that right?

A. 1972; 208,372.

Q. Looking at the bottom line, it includes the incidental revenue that comes along with bowling increase?

A. That's right.

Q. It also goes up, does it not?

A. Yes.

Q. From a figure in—$293,055.

That's the 1969?

A. Right.

[1337]

Q. And in 1972, $382,730.

Now, that's close to 90,000 for those items alone is it not?

A. Correct.

Q. We once more have history, don't we, in Paradise, history to go by, there is no Star any more in Paradise; isn't that correct?

A. Correct.

Q. I'm sorry, in Puerto Rico, San Juan.

Isn't that so?

So that no matter what you guessed or estimated or used your best opinion about three years ago in 1970 for those centers, we have some other guide now; isn't that correct?

However, the figures you gave and the figures Mr. McNeill read to you from your testimony in 1970 did not overestimate; isn't that also true?

A. That's right.

Q. They were, to use your words, conservative?

A. Yes.

Q. Now, Mr. Mendelson, yesterday in cross-examination, Mr. McNeill made a great deal of the phrase, "independent proprietors," and he asked you questions about different bowling centers, were they independent.

[1338]

He asked a question about Bowl-O-Mat itself, was this independent.

Mr. Mendelson, I want to ask you some questions about "independent."

Would you look up there, please?

Is that chandelier independent of the ceiling?

A. No.

Q. These glasses in the cases, are the glasses independent of the case?

A. No, sir.

The Court: I hope that chandelier isn't.

Q. I pull the glasses out. Is that independent of the case?

A. Yes, they are.

Q. Now, is it fair to say from the questions I just asked you that the meaning for the word, "independent" relates to something else, you have to be independent of something; isn't that so?

A. I would say yes.

Q. In other words, it doesn't make much sense to speak of independent standing alone all by itself.

Even when you say a man is independent, you mean he is independent of certain things, do you not?

[1339]

A. Correct.

Q. Now, it was in relationship to those things that questions were asked you yesterday, is it independent for an individual bowling proprietor to be part of a chain, that is to say, for Paramus Bowl-O-Mat to be owned by National Bowl-O-Mat, and later Treadways, is that independent, you were asked.

There was no limitation given to what was meant by "independent" isn't that so, in the questions that were put to you yesterday?

A. I believe so, yes.

[1340]

Q. Now, that use of "independent" yesterday, did that have any correlation to your knowledge with the use of "independent proprietor" as you find it in the testimony concerning the costs and expenses an independent proprietor has in running a center; what you were talking about yesterday in connection with Bowl-O-Mat and Paramus, National Bowl-O-Mat and Paramus Bowl-O-Mat or National Bowl-O-Mat and Holiday Bowl-O-Mat, that sense of "independent," is that the sense which is found when testimony relates to the question of how much it will cost for an independent proprietor to run a BCOD center, was that the relationship to the word, to the other things, that the word "independent" had in that prior testimony that you heard and the prior testimony that you yourself

gave when you were talking about the word "independent"?

A. Well, it was my feeling that the independence in some way was independent as it related to Brunswick being independent.

Q. So when a chart is built by the plaintiff here in which certain charges are reflected, interest in the hands of a proprietor who is not a BCOD proprietor, and it shows that no interest is charged for a BCOD proprietor, and you refer to the one who has interest and depreciation charges as "independent," do you mean

[1341]

independent from BCOD; isn't that what you meant?

A. Yes.

Q. And isn't that the only meaning which you gave to "independent"?

A. That's right.

Q. And to the extent that your testimony on cross-examination is anything else, do you want to change it?

This is the meaning, isn't it?

A. Correct.

Q. BCOD centers, not independent; other centers, independent; isn't that so?

A. That's right.

• • •

[1343]

Q. Mr. Mendelson, do you know how Bowl-to-Europe works, do you know how the Bowl-to-Europe program of Brunswick works?

A. I'm not completely sure, sir, but I think it was a question of putting or selecting names in some fashion, and these people were then sent to Washington, D. C. for a

final sort of tournament, and then from Washington the final winners went to Europe.

That would be the very vague description of my interpretation of it.

Q. Do you know anything about how the names were selected?

A. No, I don't.

Q. In any case, to your knowledge did Bowl-O-Mat

[1344]

ever run anything similar to this Bowl-Your-Way-to-Europe program?

A. No, sir.

• • •

Q. Can you tell us anything which BCOD does to attract competitors—to attract customers which you at Paramus Bowl-O-Mat are unable to do?

The Court: I will permit that. Bowl-to-

[1345]

Europe, you never did that, right?

The Witness: We don't have Bowl-to-Europe.

The Court: What else did Interstate or Lodi—

The Witness: Their price is lower than our price for league bowling.

Q. They have lower price for league bowling?

A. Yes.

Q. Do you know whether you have lost any customers because of that, because the price was lower for league bowling at the BCOD centers?

A. I don't know of any particular leagues that were taken away from Paramus because of that. What leagues

might have come to Paramus if our price had been the same, I don't know that either.

Q. So your answer is you can't connect the two, you don't know?

A. No.

Q. As someone long experienced in the bowling industry and as an independent operator of bowling centers at one time, as a former employee of Brunswick, as a manager of a Bowl-O-Mat center, can you give us your opinion as to whether a lower price for lineage for bowling games in a bowling center attracts business?

A. Yes, many, many bowlers and leagues who look for a lower price.

[1346]

Q. That's generally true, isn't it?

A. Yes, especially in today's market.

Q. In connection with your predictions, your testimony came out conservatively, have you ever been asked to make predictions for bowling centers other than those in the Bowl-O-Mat chain, to make appraisals of the value of business and possible future for them in the bowling business?

A. Yes.

Q. When did that happen?

A. When I returned from Europe I had contemplated —I contemplated going into the consulting business, bowling consulting business, and I discussed this with Mr. Rudo, who was then the, I believe, president of the bowling division of Brunswick, and it was his opinion at the time that the industry wasn't sophisticated enough for that kind of a—for an opportunity in that area.

However, he did recommend that I contact a bowling center in Worcester, Massachusetts called Lincoln Lanes, that this center was experiencing extremely poor business,

and that I might get in touch with the principals involved and visit with them.

And I did call, I believe, a Mr. Sol Reck—two people involved, two principals that I knew, Mr. Vaudreil

[1347]

and Mr. Reck, I believe, and they asked me to come up to Worcester and to look the situation over.

I did. I spent some three days in Worcester, and after examing their books and appraising the overall picture, their business was in such poor state, their volume was so low, that I think my word to them was if I was a genius and I was able to triple their business, that even with that kind of a volume it would still be a very highly unprofitable operation, and it was my suggestion to them that they just drop the place and allow Brunswick to take their equipment out.

They had not been—I don't believe they had been paying their notes. And as a matter of fact, we had agreed upon a fee, and I even dropped my fee for the trip.

I never got paid. And that was my one experience in the consulting field.

Q. Was that a very conservative appraisal you think you made, then?

A. I would think so, yes.

Mr. Hoffmann: No more questions.

(Short recess.)

• • •

[1349]

RE-CROSS-EXAMINATION.

By Mr. McNeill:

Q. Do you know, Mr. Mendelson, that the "Bowl-Your-Way-To-Europe" program involved competition among league bowlers, and in order to qualify for any such

[1350]

award one must compete and win; do you know that, sir?

A. I don't recall the details of the actual mechanics of the operation—of the event.

Q. Do you know how many bowlers from Ten Pins on the Mall end up qualifying to compete for this trip to Europe?

A. No, sir.

Q. You don't know that it is one man and one woman?

A. No, I wasn't familiar with that.

• • •

[1354]

RE-DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Please look at P-22. Do you have that in front of you, Plaintiff's 22?

A. No.

(P-22 exhibited on easel.)

Q. Now, Mr. McNeill, on re-cross-examination, addressed your attention to two figures that appear on the top line for bowling revenue for Paradise, is that right?

A. Correct.

Q. One of these figures was 1970—

A. That is correct.

Q. —$170,529, on the top.

A. Correct, sir.

Q. And the other figure was for 1972, $208,372,

[1355]

is that right?

A. Correct.

Q. Then he asked you to do the division—or the subtraction, rather—to see the difference. And you said the

difference is about $38,000. Am I correctly summarizing your testimony?

A. Yes, sir.

[1356]

Q. Now, Mr. McNeill didn't ask you about the bottom line, did he, the line that totals them all up? But I am going to.

In 1972, what was it?

A. $382,730.

Q. 1970?

A. $313,580.

Q. 1969?

A. $293,055.

Q. From 1969 through 1972 you have about $90,000, don't you?

A. Approximately 90,000, correct.

Q. And that includes what, besides the general bowling revenue?

A. That includes the shoe rental, snack bar, bar, pro shop, machines and miscellaneous.

Q. All these items are items which produce income normally associated with revenue, isn't that right?

A. They are, sir.

Q. Normally associated with bowling revenue.

A. Correct.

Q. Now, then, taking the figure of $90,000, this is the experience of only about a year and a half, isn't it, since Star closed down?

A. Well, perhaps less than a year.

[1357]

Q. Less than a year. So if you predicted that $100,000 to $120,000 would be additional bowling revenue, then, indeed, you would have it pretty close to the mark

with just a year's history, isn't that so; it would be about 90,000, wouldn't it?

A. Correct.

Q. And when the smoke settles, and there is a couple years' experience, what do you think of these figures—the figures on 53, for additional annual bowling revenue, a hundred to $120,000, and then a total of $124,700 to $149,640, including the net income per thousand dollars per bowling revenue, which is listed at another $1,247—Paramus, additional annual bowling revenue, 120 to 140—you already have a demonstration of about 90, do we not?

A. Referring to Paradise.

Q. I'm sorry, Paradise.

A. Correct.

Q. Then you testified before—and other witnesses, too—as to the additional revenue that comes from bowling, with increase in bowling revenue. That's here, is it not?

A. Correct.

Q. So what do you think, then, of your estimate, do you think it was conservative?

[1358]

A. I would say yes.

Q. Conservative in face of what?

A. In face of experience.

Mr. Hoffmann: The history of the center since the closedown of Star. Thank you.

The Court: Mr. McNeill.

Mr. McNeill: Your Honor, I am sorry to spend some additional time on this exhibit, but I must.

RE-CROSS-EXAMINATION.

By Mr. McNeill:

Q. Looking at Plaintiff's Exhibit 53, Mr. Mendelson, and looking at this estimate which you have testified

several times you feel is conservative, 100,000 to 120,000 dollars for Paradise, that is as to what, additional annual bowling revenues—period—is it not?

A. Correct.

Q. Not the extra net income which is supposedly derived after you have additional bowling revenue, correct; that comes later, does it not?

A. Well, that comes along with the increased bowling revenue.

Q. Correct. The first column, the 100,000 to 120,000 dollars, has to do strictly with additional

[1359]

bowling revenue?

A. That's what it says on the chart.

Q. And you testified just a moment ago, in response to Mr. Hoffmann, that you had some indication from history of some $90,000 experience in additional bowling revenues in San Juan's Paradise?

A. Composite revenues.

Q. Composite revenues. Bowling revenues plus lots of other things, isn't that correct?

A. Yes, that was the bottom line I read.

Mr. McNeill: Can we turn back to Exhibit 22, please, to clarify that?

(P-22 exhibited.)

Q. Once again focusing on the matter of strictly additional bowling revenues, this 100,000 to 120,000 dollar figure. Now, sir, to find the experience for additional bowling revenue, we look only at the top line, don't we?

A. Bowling revenue, yes.

Q. What is the difference between 1968, or take '69, or even take '70, before Star discontinued as an effective competitor, and compare it with your experience, two

full years later, you achieve $208,000. What is the difference between 208 and 170?

A. Between those two figures, $38,000.

[1360]

Q. Not $90,000?

A. Not on that basis.

Mr. McNeill: All right. Nothing further.

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. But just one moment. If you look at P-53—when you put in the extras that go along with the increase in bowling revenue, you put in an extra $247 per thousand, is that right?

A. That is correct.

Q. That's what this shows. You come to a figure here, including everything, including these so-called extras, using your word "composite," you come to a figure of $124,700 to $149,640, is that right?

A. Correct.

Q. That's the totalization.

Now,then, if you take the comparable line from P-22—which is Plaintiff's Exhibit 22—which compares the years, as I demonstrated a moment ago, as you testified a moment ago, the difference was in 1969 about $293,000; in 1972 about $382,730; or a difference of approximately $90,000.

And that was based upon a tiny experience, wasn't it, about a year?

A. Possibly less than a year.

[1361]

Q. Possibly less than a year. So my question to you was: Is $90,000 so remote from $124,000, based upon that

brief experience, as to make the estimate conservative or exaggerated?

And your answer was "conservative."

A. Right.

Q. You have already, within less than a year's experience, reflected on the chart—come within about $30,000 of the projected figures.

Is there any reason to suppose that number at Paradise—that is, the total revenue, including bowling, and the other related items, such as the shoes, the snack bar, the bar, and so on—is there any reason to suppose that that total figure will not increase this year?

A. No, I would believe it would increase.

Q. You have reason to believe that it is increasing?

A. Yes, sir.

Mr. Hoffmann: Thank you. That's all.

Mr. McNeill: Your Honor, I'm sorry, but this is so misleading that I must correct it.

RE-CROSS-EXAMINATION.

By Mr McNeill:

Q. Let's turn again to Exhibit 22—

[1362]

Mr. Hoffmann: Your Honor, is there need for all this?

The Court: I will permit him to go on. It is discretionary, I think.

By Mr. McNeill:

Q. When Mr. Hoffmann gets you to subtract $293,000 from $382,000 he is very conveniently referring to revenue items only, without taking out the cost, isn't he?

A. That's income.

Q. That's income. That says nothing about the cost, for example, of shoe rental, the cost of snack bar, the cost of bar, the cost of pro shop, or the cost of machine and miscellaneous, does it?

A. No, that's an income figure.

Q. That's an income figure.

A. Revenue.

Q. And it doesn't get distilled to take into account the cost until you get way down here and indicate at the bottom, for example, that your shoe rental is done on a 90 per cent profitable basis, but, for example, that the snack bar is only 19 per cent profitable.

So we are comparing apples with oranges, are we not, sir?

A. I was asked to project revenue figures.

[1363]

The Court: Have you finished?

Mr. McNeill: Yes, sir.

Mr. Hoffmann: I have one question, your Honor, in face of that.

The Court: I will believe it when I hear it.

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Now, this item of $1,247, the bottom line—do you see it?

A. Yes, sir.

Q. That is the item that was used in the calculation, isn't it?

A. On the other chart.

Q. On the other chart. And that shows an increase in revenue of $247 over the thousand dollars, does it not?

A. Yes, sir.

Q. That is an increase, after everything that is accounted for, has been accounted for; that's another $247 for a thousand, isn't it?

A. That's correct.

• • •

[1367]

BENJAMIN E. BENSINGER

DIRECT EXAMINATION.

Mr. Zucker: "This is the deposition of Benjamin E. Bensinger, the Chairman of the Board of Brunswick taken by plaintiffs, I believe, on April 8 or April 9, 1968. The person asking the questions is Mr. Hoffmann and the person giving the answers is, of course, Mr. Bensinger. Starting on page 3, the background information——

"Question: Would you state your name, please?

"Answer: Benjamin E. Bensinger.

"Question: And your home address?

"Answer: 1540 Lake Shore Drive, Chicago, Illinois.

"Question: And your business address?

"Answer: 69 West Washington, Brunswick Building, Brunswick Corporation.

"Question: Your age?

"Answer: 62.

"Question: What is your present occupation?

"Answer: I am Chairman of Brunswick Cor-

[1368]

poration."

Mr. Agee: "Starting again at page 27, at this point in the deposition we marked as an exhibit, which is now Plaintiffs' "——

The Court: Read it as it is and you can correct that later.

Mr. Zucker: —"which is now Plaintiff's Exhibit 361, a letter from Mr. Bensinger in his capacity as Chairman of the Board of Brunswick to Mrs. Ethel Levine dated February 11, 1965, and at this time this letter was written, Mrs. Levine was the then owner of Dutchess Lanes in the Poughkeepsie area. Mr. Bensinger's attention was called to the last paragraph of the first page of that letter which read:

" 'In spite of these difficulties, we are most anxious to work with you in finding a solution whereby you can retain the property. Our people plan to make an evaluation of the business to see if it is possible to successfully operate a bowling center there. I am certain they will be in touch with you in the very near future.'

"Question: Do you know whether the sense of that paragraph is that if your people felt it

[1369]

was possible to successfully operate a bowling center there, that you would create the opportunity for Mrs. Levine to operate it?

"Answer: I would assume so.

"Question: I address your attention now to the second paragraph of the letter.

"Answer: Correct.

"Question: In which you say, 'It is apparent that the cash flow is inadequate to service present debts.'

"Do you see that phrase?

"Answer: I do.

"Question: And then you go on:

'Although the situation should improve in June, when your second mortgage is paid, even then cash flow will be insufficient to cover the obligations of the business.'

"Did you have any formula or standard experience that could be articulated which would indicate when cash flow is inadequate to service present debts?

"Answer: Well, I don't say that we had any formula, but an analysis and the fact that our installment credit division had dozens of cases

[1370]

similar to this, they came to know pretty well, predicated on analysis of an establishment's business, whether it could succeed on the basis it was operating or whether changes had to be made in a variety of forms: curtailment perhaps of expenses, perhaps more promotion, which would cost more money.

"It required an analysis on an individualized basis; I don't think there was any pat formula conclusively proved aye or nay.

"Question: When you used the phrase, 'cash flow,' is this a specific and precise concept?

"Answer: I would think so.

"Question: Could you define it for us?

"Answer: Well, this would represent after depreciation other charges, the amount of cash availability at the end of a period of time of an operation. If there were mortgages, incumbrances and other things, this would have a great effect. If this could be eliminated, it would alter the picture.

"Question: Do you know what expenses were normally charged against cash income in order to derive a cash flow figure?

"Answer: Of that establishment, I do not.

"Question: Do you know it for Brunswick-

[1371]

operated bowling centers?

"Answer: Not in detail, no.

"Question: Do you know whether or not Brunswick-operated centers deduct from cash inflow interest on debt and depreciation of equipment in deriving a cash flow figure?

"Answer: It would certainly be involved in a statement of account to derive cash flow.

[1372]

"Question: Do you know whether that is normally done by independent operators in their financial computations?

"Answer: I do not.

"Question: I address your attention to the next paragraph which has the following in it:

'As you may know, we recently announced firm prices and firm terms for used equipment. Under this new program, all installment contracts include a finance charge rate of five percent add-on per annum.'

'Did this new program go into effect in 1965?

"Answer: I would suspect prior thereto.

"Question: The previous year, '64?

"Answer: '64, I can't answer the precise date on that.

"Question: Somewheres in that period?

"Answer: I know that Mr. Hanigan, and I was involved too, so were other officials of the company, in prolonged meetings because we had acute problems facing the company, and the decision was made to maintain prices, to adjust finance charges and to treat all customers identically and equitably.

[1373]

"Question: Does it follow from what you have just said that after the five percent add-on was made a part of the new program, that it was applied to similar situations for all purchasers?

"Answer: I would say all purchasers from the date of inauguration of this policy had to conform to the then terms, irrespective of whether it involved down payment, perhaps trade-in of equipment and/or finance charges, yes.

"And that was our policy and still is."

Mr. Zucker: At this point we had marked for identification Brunswick's Evaluation Report No. 76, which is now marked as Plaintiff's 344, which was an analysis of the Dutchess Lanes Center under the date of March 29, 1965. Mr. Bensinger examined portions of the report.

Beginning at page 33 of the transcript:

"Question: Mr. Bensinger, I address your attention to page eight of Plaintiff's 3 for identification and ask you if you will notice the first line under the heading, 'Profit and Loss Cash Flow, BCO Forecast.'

"What does that mean, sir? What do the initials 'BCO' stand for?

[1374]

"Answer: I don't see where you see 'BCO' forecast.

"Question: On page eight you will notice there are three lines centered, 'Lemar, Inc., Poughkeepsie, Profit and Loss Cash Flow,' at the top of the page.

"Answer: Yes, I see that.

"Question: Just below that, slightly to your right, 'BCO' Forecast.

"Answer: 'BCO' refers to Brunswick's Center Operations.

"Question: What does the phrase mean, 'Found in an evaluation report?'

"Answer: There are others infinitely more qualified than I to explain the multitudinous details with

respect to the BCO operation. But I can tell you what it is, if that is what you are asking.

"I don't understand what you are asking.

"Question: Mr. Bensinger, I thought my question was quite plain and I have not gone into any of the multitudinous details yet, perhaps I will later on.

"I just asked you what the phrase 'BCO' forecast meant.

[1375]

"Answer: It is a forecast made by our department, Brunswick Center Operations.

"Question: And by forecast?

"Answer: Projection.

"Question: Projection of possible future earnings, is that a fair statement?

"Answer: Either earnings or losses or the results of their operations.

"Question: I show you the line 'Net Cash Flow' with 'Deficit' in paren, and ask you to observe, if you will, the column under 1965 which under net cash flow shows $28,389.

"Is my reading correct?

"Answer: Pardon?

"Question: Did I read that correctly?

"Answer: You did.

"Question: Now, under 'Expenses' do you see any figure on this projection for interest?

"Answer: Not on that page, no.

"Question: Would interest normally be found in such a projection?

"Answer: Would interest be normally found in such a projection?

"Well, interest certainly is an item of cost. If there was an interest obligation,

[1376]

where it would be found I don't know. It certainly does not appear to be on this sheet. It might be on other sheets.

"Question: You don't know whether it would be found, say, under non-cash items, which is another heading on this page?

"Answer: It doesn't appear to be, because that refers solely to total depreciation.

"Question: Indeed, there is no reference on the page which points to interest, is there?

"Answer: No, there doesn't seem to be.

"Could be. Again this would have to be analyzed by those who have the requisite expertise in this area. It might be under certain of the expenses.

"Question: Have you had occasion over the years to analyze evaluation reports for the Brunswick operating division?

"This is not the first one you have seen, is it, sir?

"Answer: No. But I do not generally review matters such as this. This is not within my province in the operation. I was in charge of the company's business. There were others that I delegated that responsibility to.

[1377]

"Question: Did you ever at any time make decisions as to whether or not Brunswick should acquire an operating center, bowling operating center?

"Answer: I don't believe so.

"Question: Did you ever participate in the making of such decision?

"Answer: Yes.

"Question: In participating in the making of such decision, did you have occasion to consider evaluation reports prepared by Brunswick people as to the possible future earnings or loss of the acquired bowling center?

"Answer: I am sure that those that would have made the presentation to management would have carefully analyzed and made recommendations that might have referred to certain statistics or figures to us in order to arrive at a decision.

"Question: Without going into multitudinous details, I address your attention to the total depreciation line under 1965 again, which you will observe has a figure of $27,300, and that also appears, does it not, under expenses as Brunswick's depreciation, $27,300?

"Answer: $27,300, correct.

[1378]

"Question: Have you any way of telling from looking at this page to what this reference of Brunswick depreciation refers?

"Answer: No, I do not.

"I can only assume it is a normal depreciation charge requisite to the establishment."

Mr. Zucker: Turning to page 38 of the transcript, Mr. Hoffmann had marked for identification a profit and loss statement of Dutchess Lanes in the Poughkeepsie area, again for the year ending December 31, 1966. This profit and loss statement has been marked in this action as Plaintiff's Exhibit No. 24 for identification, and at transcript page 38 Mr. Hoffmann had a question:

"Question: If I were to suggest that it is the profit and loss statement put out by the Bowling Center Operations Division submitted to us in answer to our demand for documents, are you willing to affirm that?

"Answer: Would I what, sir?

"Question: Will you affirm that statement?

"Answer: Well, it is a complete detailed report on Dutchess Lanes on Poughkeepsie, N. Y.

"Question: Very good.

[1379]

"Answer: Put out by the Bowling Center Operations Division.

"Question: This reflects actual operation, does it not, sir, for the year 1966?

"Answer: I can only assume that that is what it does, sir.

"Question: But if it is what it purports to be, that is what it does, is that correct?

"Answer: Well, it is dated December 1st, 1966, and I don't know if this is the fiscal year or calendar year; but, it certainly appears to be a detailed report.

"Question: I address your attention to the last page. Would you notice under the first column which is entitled 'Account Description,' an entry which says Profit or Loss, and then a minus sign after the 'Loss'. Am I fairly reading it?

"Under the first column it says 'Account Description.'

"Answer: Yes, I see.

"Question: Then after the word 'Loss' there is a minus sign, is that right, or a little dash?

"Answer: Yes.

[1380]

"Question: Now, if your eye will go across the page under, 'Current Actual,' do you see the entry $30,755 with the same little minus sign or dash?

"Answer: I do.

"Question: Can you tell us what that means?

"Answer: I cannot.

"Question: Well, if I suggest to you that following the description given under 'Account Description,' which says 'Loss' with a little dash, that means that during '66 operations insofar as reported here, Dutchess lost $30,755. Would you say my description is inaccurate in any way?

"Answer: If that dash—and, I guess it can be assumed that the dash refers to a loss, yes.

"Question: You would see no other reason for putting the dash after the word 'Loss' under 'account

description,' would you, sir, except to designate what is a loss?

"Answer: No.

"Generally, in many other statements, and I am not familiar with these statements, if

[1381]

it were a loss, it could be a bracket.

"Question: Or sometimes perhaps in parentheses?

"Answer: Some marking in parentheses.

"Question: But that would be indicated on the document?

"Answer: Normally, yes.

"Question: And here the indication for a loss is the dash, is it not?

"Answer: It would appear to be, yes."

Mr. Zucker: At this point in the transcript Mr. Hoffmann on behalf of the plaintiffs marked a document which is now Plaintiffs' Exhibit 25 for identification, a similar profit and loss statement for Dutchess Lanes in Poughkeepsie, this time for the fiscal year ending December 31, 1967, and Mr. Hoffmann refers Mr. Bensinger to the last page of the document and asks the following questions:

"Question: Do you notice on the first line of figures, again under, 'Account Description,' a line that says 'Profit or Loss' with a little dash after in the first column?

"Answer: Right.

"Question: Do you see 'Profit or Loss' with

[1382]

a little dash? Your answer is right? I am sorry, I didn't hear you.

"Did you say right to that?

"Answer: I did.

"Question: Yes.

"Then under, 'Current Actual,' do you notice the figures $28,776 with a dash?

"Answer: I do.

"Question: Would your testimony as to this be the same as to Plaintiff's 4 for identification, that is, that it appears to indicate an actual loss for the period of time described up until the date?

"Answer: That is correct."

Mr. Zucker: Omitting some colloquy, I am now at page 43, where Mr. Hoffmann asked:

"Question: Is it to your knowledge, Mr. Bensinger, the policy of the Bowling Center Operations Division to run bowling centers for any standard period of time at an actual cash flow loss?

"Answer: I think I understand your question, sir.

"Question: Well, if it needs any clarification, I will be glad to give it, sir.

[1383]

"Answer: No.

"But I think it needs an answer that perhaps goes beyond.

"It certainly would not be the policy of any corporate operation to conduct its business ad infinitum at a loss, but the BCO operation does entail some establishments that are profitable, some that are losing moderately.

"So, I think to answer the question, if it is our policy to operate the centers solely for the purpose of generating losses, the answer would be no.

"The objective is to convert them to at least profitable operations, perhaps then dispose of them.

"The whole BCO operation itself came about, as I am sure you are well aware, certainly Mr. Lieblich is, as a result of our inability to collect our note accounts receivable.

"And I don't know whether you care for me to amplify this at this point in time?

"Question: I would be delighted if you would, sir.

"Answer: But, obviously, we had to have some procedure and policy whereunder and whereby

[1384]

we would salvage as much as possible out of a very unhealthy number of note accounts receivable from customers. So this salvage operation was instituted.

"Question: Are you talking now of the beginning of a program to acquire bowling centers? That is to say, your statement as to the operation being a salvage operation; does that relate to the point in time when Brunswick decided to operate bowling centers in recent years?

"Answer: Well, I didn't know that we ever decided to operate bowling centers in the sense that we would go out, pell mell, and install or in any fashion install a new installation.

"Our interests, as I think any other company's interest is and has to be, is to work with their customers.

"Question: Is it your testimony that the sole motivation for Brunswick's operating a bowling center is a salvage operation in the situations where the bowling center proprietors are in default on debts to Brunswick?

"Answer: Would you read that back, please?

("The question was read.)

[1385]

"In answer to that, I would say that is the primary reason for the operation. And I am talking reasonably currently. I don't know what specific point in time you had in mind, sir.

"Question: Presently.

"Answer: Presently?

"I believe it is still a salvage operation. I think that some that have been improved, we have disposed of. That does not mean that if there were a location that our BCO people felt required another installation, we have quite a few warehouses full of equipment, and I think it is our business to protect the shareholder, and we would like to move that inventory if we could so do without in any sense being harmful."

The Court: Let's stop there, page 669. Luncheon recess, members of the jury. Thank you for your patience and attention.

(Luncheon recess.)

• • •

[1386]

The Court: Now, when you continue reading the depositions, are you in a position to state the exhibit number as far as this proceeding is concerned?

Mr. Zucker: We can give it a new number for identification purposes and just refer to it that way.

The Court: Whichever way.

(The jury entered the courtroom, and the following proceedings were had within the hearing and presence of the jury:)

The Court: Page 669, right, tenth or eleventh line down, roughly.

(The reading of the testimony was resumed by Mr. Zucker and Mr. Agee:)

[1387]

"Question: Do you have any knowledge of how many Brunswick-owned or operated centers are in operation?

"Answer: Within broad limits, yes.

"Question: Could you give us the figure within broad limits?

"Answer: It would hazard a judgment that we perhaps have 14, 15 thousand lanes.

"Question: Can you convert the lanes into centers?

"Answer: I would prefer to check my figures on this. It must be in the area of——

"I would rather not hazard a guess.

"Question: If I suggest the following numbers to you, can you tell us whether this accords in a general way with your knowledge: That in 1965 there were 136; in '66, 194; and in 1967, 198?

"Answer: Sounds very reasonable.

"Question: Addressing yourself to centers with a cash loss, do you have any knowledge about how many centers there are that produce an annual cash loss of the 198 that existed in 1967?

"Answer: I do not.

[1388]

"Question: If I suggested the number 86, would that mean anything to you?

"Answer: It would not."

Mr. Zucker: At transcript page 47 we marked as an exhibit for identification a document which was essentially the same as a document marked in this action as Plaintiff's Exhibit 15, the first page of which has been blown up as a chart and represented Mr. Lieblich's analysis of centers which made a profit, which incurred a cash loss and which incurred a net loss in the accounting sense, and Mr. Hoffmann asked the following question, at page 48 of the transcript, with respect to the analysis of these figures:

"Question: You note that the second line indicates centers with a cash loss and shows 42 for 1965, 97 for '66 and 86 for '67.

"Does that accord with any knowledge you might have as to the approximate number of centers yielding a cash loss?

"Answer: Well, as I have indicated, I am not familiar with the details of this whatsoever.

"If these figures came from Brunswick, I can only assume they are accurate.

"Question: When you see the figures for

[1389]

centers with a net loss, that is to say 108 for 1965, 131 for '66 and 121 for '67, does that come as any kind of a surprise to you?

"Answer: None.

"Question: Are you operating all these centers, Mr. Bensinger, as a salvage operation?

"Answer: To the best of my knowledge, yes."

Mr. Zucker: Then at this point Mr. Hoffmann asked the following questions:

"Question: Do you have any idea what the total losses involved are for running the salvage operation each year?

"Answer: Not in dollars and cents.

"I have been informed that we have been infinitely better off by this policy of operating.

"Question: As against what alternative, closing down the centers?

"Answer: Closing the centers and putting additional equipment in warehouses. We are getting our debts reduced, and our collections are coming in.

"Question: If you were to close down all the centers instead of incurring these annual losses, would you then have a sizeable capital loss?

[1390]

"Answer: If we closed them down?

"Question: Yes.

"Answer: Why should we?

"Question: Suppose all the ones that were losing money, suppose you closed them down at once; would that result in a large capital loss?

"Answer: I would assume it would. I would have to analyze the figures.

"Question: Brunswick has had the experience of having in one year a very large capital loss in recent past, isn't that so?

"Answer: If you mean our write-off, that is the understatement of all time. Yes.

"Question: Is it fair to state to your knowledge, as seems to be reported in financial circles, that this was the second largest writeoff in recent years, exceeded only by General Dynamics?

"Answer: The one in 1965 you are referring to?

"Question: Yes.

"Answer: I believe that is correct. I don't know if it is the second or third, but it was mammoth, not very pleasant.

"Question: Is my memory at all accurate

[1391]

when it suggests to me 76 million dollars or approximately that amount?

"Answer: That is it.

"Question: Was it necessary to explain that 76 million dollars to the stockholders via annual reports or otherwise?

"Answer: It was.

"Question: If you had a large capital loss at this time, would it be necessary to explain it to the stockholders of Brunswick?

"Answer: I am sure it would.

"Question: What is your informed opinion as to the effect of that on the stock quoted on the stock market today, were you to sell all these centers at once?

"Answer: I don't think from my knowledge of the business we have that problem facing us.

"Question: Tell me, Mr. Bensinger, is it a company policy to gradually dispose of the losing bowling centers, that is to say over a period of years?

"Answer: I can't answer that either.

"I would suspect our energies would be devoted to converting the losers to winners, if that is possible.

[1392]

"If you are saying that after every effort has been exhausted to do that, the wisdom of carrying on ad infinitum, that is quite another question.

"I would have to have that, I would think referred to those in charge of that division and those more familiar with the details than am I.

"Question: Has there been any policy formulation as to how long Brunswick is prepared to operate a losing bowling center; that is to say, when a center loses money?

"Answer: Not to my knowledge have we put any span of years on a policy of that nature.

"It is possible there could be such a policy; I am not aware of it.

"Question: Is it the Brunswick policy to sell off, if buyers can be found, its losing bowling centers?

"Answer: I can only assume yes.

"Question: Do you know one way or the other?

"Answer: I do not.

"Question: Who in the company would best know the answer to that question?

"Answer: I would think Mr. Rudo,

[1393]

the man in charge."

(Discussion off the record.)

Mr. Zucker: We'd like to substitute additional pages from the deposition at this point.

(Discussion off the record.)

Mr. Zucker: I will have to read both the questions and the answers.

The Court: Where are you reading from now, what page?

Mr. Zucker: I'm reading from the top of page 56 of the deposition of Benjamin Bensinger.

The Court: Do we have it?

The Clerk: No.

Mr. Zucker: "Question: Is there, to your knowledge, one price charged for automatic pinsetting machines?

"Answer: Yes, there is one price.

"Question: What is that price, do you know?

"Answer: I think the package price, there are those here who are familiar with this, for used equipment is 85 or $8600 for a lane and pinsetter used.

"Question: You said for a——

[1394]

"Answer: For a lane and pinsetter, used. Used equipment.

"Question: Let's address ourselves to new equipment, if you will, and separate in your mind a lane from a pinsetter.

"Is there a standard price for new——

"Answer: There is a standard price. I couldn't quote it because I don't know if it——

"Question: If I suggest the amount of $8100, would that jog your recollection?

"Answer: Well, I recall an $8100 price. Whether that is the current price, I don't know.

"Question: Whatever the current price is, is it the standard price, is that right?

"Answer: That's right.

"Question: That is to say, for all purchasers; is that right?

"Answer: Well, all purchasers, I'm not sure there is not an adjustment made for the Government or its agencies.

"Question: Now, as to the price of $8100 we were speaking, were we not——

"Answer: That is a new pinsetter.

"Question: New pinsetter. Is that the A-1 or the A-2, or is there any difference in

[1395]

price between them?

"Answer: I don't believe there is any difference and I would assume it is an A-2.

"Question: Do you know the price for a lane as such as distinguished from a pinsetter?

"Answer: I do not.

"Question: Do you know whether there is a standard price for a lane?

"Answer: Yes, it is a standard price.

"Question: If I suggested the amount of $4500, would that jog your recollection in any way?

"Answer: I believe that there was a price of the new lane with the requisite equipment, and what it is today, I do not know.

"Question: Are these prices made standard because of the requirements of C. I. T.?

"Answer: In no fashion, sir.

"Question: Well, does C. I. T. require a standard price or that the same price be charged a different customer?

"Answer: I don't believe so.

"Question: Do you know one way or the other about that?

"Answer: I once looked at—I was involved

[1396]

in negotiating with the C. I. T. agreement, but I can't recollect, but I would doubt very much. They were concerned in getting their money.

"Question: Are you telling me now as to the period about 1960 or 1961——

"Answer: I am.

"Question: At the time did the prices I suggested in my questions hold, that is to say, the price of $8100 for pinsetting equipment and $4500 for a lane?

"Answer: I think there were variables during those years.

"Question: Did those variables exist after agreement, if any, reached with C. I. T. operate again?

"Answer: If there were such, I am sure they did.

"Question: Was there an agreement reached with C. I. T. as to financing in 1960-'61?

"Answer: Prices?

"Question: As to financing.

"Answer: Yes, there were specific agreements with C. I. T. as to their interest charges, what they expected to get.

"Question: Were there any agreements reached

[1397]

with C. I. T. which required that the price for the pinsetter be uniformly $8100?

"Answer: Well, I think the price of the pinsetter was never altered from $8100. This is a matter of my recollection at this point in time. If there were variables, it would have been on a lane, a combination, or something else. This is the best of my recollection.

"Question: I see. Do you remember it ever having been sold at a lower price——"

Mr. Dwyer: Did you leave out the word, "not"? "You do not remember?"

Mr. Hoffmann: Read the question over.

Mr. Zucker: Yes, I see.

"Question: You do not remember it ever having been sold at a lower price than $8100 during the period 1960 to 1961?

"Answer: I do not."

The Court: That was the deposition of Mr. Bensinger?

Mr. Zucker: Yes.

Then starting again at page 70——

Mr. Dwyer: Of the same deposition?

Mr. Zucker: No, of the transcript.

Mr. Dwyer: Page 675?

[1398]

Mr. Zucker: Yes, same deposition, Mr. Bensinger:

"Question: You are aware, are you not, of sizeable losses incurred generally by Brunswick each year, are you not made aware of that?

"Answer: I certainly am.

"Question: Do you have any idea of what the gross income of Brunswick is or was for 1967?"

The Court: You have lost me. What page are you on?

Mr. Agee: Page 675, your Honor.

The Court: All right, I have found it.

Mr. Zucker: "Question: You are aware, are you not, of sizeable losses incurred generally by Brunswick each year, are you not made aware of that?

"Answer: I certainly am.

"Question: Do you have any idea of what the gross income of Brunswick is or was for 1967?"

The Court: You lost me. What page are you on?

Mr. Agee: Page 675, your Honor.

The Court: All right, I have found it.

[1399]

"Answer: The gross income of Brunswick Corporation?

"Question: Yes, is it Brunswick Corporation?

"Answer: In excess of 300 million dollars.

"Question: Is that the consolidated Brunswick companies?

"Answer: That is.

"Question: Did that figure—300 million dollars?

"Answer: Plus."

[1400]

"Question: Plus

"(Continuing.)—300 million dollars plus represent any consolidated profit for the company?

"Answer: Well, you are asking a question that one has to do with volume and the other has to do with net profit. I wish you would perhaps rephrase that for me.

"Question: Was there a net profit made by the consolidated Brunswick Company during the fiscal year 1967, if that was the fiscal year or the calendar year, whichever way the reporting was done on it?

"Answer: Yes, there was.

"Question: Very well.

"Was there a loss incurred by any of the Brunswick divisions or operations so far as you know during that same period of time?

"Answer: There was.

"Question: Was there a loss incurred by the Brunswick operated bowling division during that period of time?

"Answer: I believe there was.

"Question: Were you made aware of the extent of the loss?

"Answer: I am sure I was exposed to it, yes.

[1401]

"Question: Is there some particular reason why that did not register with you, Mr. Bensinger, is that what you are telling me?

"Answer: No. But I know we lost in another division, but I couldn't tell you today what the amount was, sir.

"Question: Would a loss of more than a million dollars be regarded by you as a sizeable loss for a particular operation of Brunswick?

"Answer: Yes, it would.

"Question: What was the net profit figure in 1967 to which you referred a minute ago in your testimony?

"Answer: I prefer to look at a recently issued annual statement that we have on that.

"Question: Can you give us an approximation within a tolerance of ten, fifteen percent?

"Answer: I can tell you it was 33 cents per share, and you can multiply that by 18 million, 400 and some odd thousand shares and get the exact amount in dollars.

"Question: Do you know whether there exists any policy at all concerning the extent to which an individual bowling center owned or operated by

[1402]

Brunswick can incur a loss for a single year and still be maintained by Brunswick?

"Answer: No, I do not.

"Question: In terms of your own knowledge and judgment about Brunswick's conduct of its affairs, would you maintain a bowling center that lost 5 million dollars a year?

"Answer: Well, yes, conceivably.

"I will have to qualify that answer: Maybe we own the land and the building, and there might be mineral rights, maybe there are some discoveries of oil, some exotic minerals beneath it.

"I think we would look askance. I doubt very much whether we——

"Question: Has there been a situation up to now, Mr. Bensinger, in which Brunswick has been fortunate enough to find exotic minerals, oil, gold or things of that general kind, underneath its land?

"Answer: In one instance, yes.

"Question: Was that land pre-empted by a bowling center?

"Answer: No.

"Question: Did that great find come in some

[1403]

other branch——

"Answer: I didn't say it was a great find.

"Question: Pardon?

"Answer: I didn't say it was a great find.

"Question: You are quite right.

"I should not have used that phrase. It did not swell the earnings of the bowling division, did it, Mr. Bensinger?"

Mr. Zucker: Turning to page 122 of the Bensinger transcript, Mr. Bensinger referred to what Brunswick called a five year plan which was prepared in the middle of 1965 concerning Brunswick's objectives for the Bowling Centers Operating Division, I believe, for the year period 1966 through 1970.

Mr. Hoffmann asked Mr. Bensinger the following question, the first question on page 122.

"Question: Now, Mr. Bensinger, I would like you to address your attention to Plaintiff Bensinger's 60 for identification. I ask you to read, if you will, under B entitled, 'Plans for meeting objectives, objective number one,' and then there is a matter under there which is introduced by a little 'a'.

[1404]

"Answer: Yes, sir.

"Question: Are you familiar with the circumstance that in 1965 there was substantial addition to the personnel staff of the Bowling Division, Bowling Operating Division?

"Answer: I am.

"Question: When the statement is made in objective number one, little 'a': 'The basic organization chart should be able to handle two or three times the number of establishments we will have at the end of this year,' do you know whether that basic organization chart was designed to accommodate merely salvage operations?

"Answer: I would assume that was the intent. At that point in time we were taking back, unfortunately, an inordinate number of establishments, and the exact and precise number of those that we might have to take back in the future could have been greater.

"Fortunately, conditions changed a bit, so that we did not have to take two or three times as many back.

"Question: I address your attention to little 'b'.

[1405]

"Answer: Yes, sir.

"Question: The first sentence of which is: 'By the end of 1966, we should be prepared to move worldwide in operating bowling establishments if there is a corporate need.'

"Can you tell me what that sentence means?

"Answer: I think I know the intent of the sentence. It should mean that—or, does mean, that by the end of 1966 with more experience, a little more in the way of trained managerial talent, a little more knowledge of the details of operating a very, very large chain, that if it were deemed wise by the corporation to improve its profits, they would be in a position to expand their operations.

"Question: And that would be done, is it the intent of this sentence, through the table of organization of the Bowling Operating Division?

"Answer: It implies that it would have been done, had it been done through that particular organization.

"Question: I address your attention to the next sentence: 'The personnel should become experts in their field, particularly the staff

[1406]

members, and with this additional year of experience we should be able to take on additional assignments throughout the world, if necessary.'

"Is that in contemplation limited to salvage operations?

"Answer: Yes and no, sir.

"Question: What is the no, sir?

"Answer: The no, sir, is I was intimately involved in the establishment of a counterpart of BCO in Europe, the purpose of which was to in various countries arrange to have bowling establishments built, created, with Brunswick equipment and to popularize the game, if possible, in England and France and Germany and many other—Italy—countries.

"Question: I address your attention, Mr. Bensinger, in the same document to a later page bearing on top, 'B, Plans for meeting objectives,' then, 'Objective number two.'

"Answer: Yes, sir.

"Question: Do you notice the listing of establishments for 1965 through 1970?

"Answer: I do.

"Question: Was it known to your knowledge in 1965 that there were all these different establish-

[1407]

ments in distress?

"Answer: This isn't many establishments, sir, compared to the number that were in distress.

"Yes, we knew in 1965. Again, I don't know the date at which this was written. But we knew that the Credit Department made an analysis of the establishments that were delinquent, those that looked as though they might work it out, those that would have extreme difficulties. And I am assuming that this is a list of the extreme difficulties which we would probably have to replevin or take over and operate and try and salvage.

"Question: Isn't it the meaning of this item that you were projecting five years in advance to the acquisition of 25 establishments in distress in 1970?

"Answer: Well, it would appear that 1965, '66 and '67 figures were infinitely higher than they were in '68. So the only deduction I can make from this is that there wouldn't be so many in distress at this point in times and that we could effectively take them over if we had to, salvage them, get a cash flow, hope they would be profitable.

"Question: Was it contemplated that when the

[1408]

bowling establishments became profitable, sir, that they would be sold off?

"Answer: Yes. I think we had made establishments available for sale. I think we sold some of them.

"Question: Was it contemplated to sell all the bowling establishments which became profitable?

"Answer: I think if we had an offer for all of the establishments on the basis of a sales price that was a going business operation, we might very well be disposed to get rid of them. I don't know.

"Question: Well, do you know whether it was contemplated to sell them off individually as they become profitable?

"Answer: I don't know that there was any written policy to this effect, but I know that there were many discussions, and I believe that we would have disposed and would still, if a customer was worthy of the credit, would pay the price that we would have set on the establishment, I think we would make it available for him.

"Question: Mr. Bensinger, I address your attention to the same document, under 'B. Plans

[1409]

for meeting objectives,' little 'b', little roman numeral 'iv'.

"Answer: The A-2 conversion business?

"Question: Yes.

"The statement is made: 'The A-2 conversions in the better houses and certain geographical areas will aid in increasing revenues, enticing competition to try to convert also and thus assist the bowling division sales.'

"Can you tell me whether conversions, A-2 conversions in the better houses have taken place?

"Answer: I cannot answer whether they have. I can only assume that they have.

"Question: Do you understand the sense of this?

"Answer: I think I do, yes.

"Question: Will you be good enough to explain it to me?

"Answer: I think the intent here is clearly stated. In the good houses in certain locations, with A-2 conversions it would stimulate business and, as a consequence, when business gets stimulated in house A, house B, a coup[illegible]of miles away, or wherever it might be, and C and D w[illegible]uld have some

[1410]

call for comparable equipment by their customers and, in turn, they would perhaps be amenable to having a Brunswick salesman sell them some A-2 conversions.

"Question: Perhaps the obscurity I see in your answer is my own difficulty and not what you said. But when the reference is made to the A-2 conversions in the better houses, is that reference to the better houses owned or operated by Brunswick?

"Answer: I would think this reference——

"Question: This reference?

"Answer: Yes, this reference is made to the better houses that Brunswick is operating.

"Question: Then when it refers to increasing aid and increasing revenues, it is meant in increasing revenues for those houses, isn't that so?

"Answer: Yes, for those that had the A-2 conversions, because it is faster and more popular with the bowler.

"Question: Then the next phrase with reference to enticing competition to try to convert also. By competition, is that meant to represent the independent bowling establishment?

"Answer: I would assume it would.

"Question: Or other chain of bowling centers?

[1411]

"Answer: I would assume so.

"Question: And thus assist the bowling division sales. Does that mean the bowling division which makes the A-2?

"Answer: Which sells the A-2.

"Question: Sells the A-2 conversions, would have more sales if the competition converted, is that right?

"Answer: Yes. If this helped one proprietor's business, it is reasonable to assume it would help others and, therefore, the others would be interested and, therefore, perhaps buy.

"Question: At the same time, then, stimulate the sales of Brunswick bowling equipment?

"Answer: Stimulate the business for the proprietor and stimulate sales for Brunswick, yes.

"Question: Now, referring to the same entry again, this A-2 conversions in the better houses, do you know whether it was contemplated that A-2 conversions would be made as a mere salvage operation in the better houses?

"Answer: I don't recollect precisely, but I know that in some instances it was felt unwise to expend the monies at a certain point in time

[1412]

and make these conversions until certain renovative steps had been taken, perhaps clean up the establishment, change its management, because the conversion does cost money to Brunswick and/or to a customer.

"So, some of them, I imagine, remaining with the A-1's, as they became better managed and better organized, it would appear that some of them were converted to A-2's.

"Question: Do you know whether upon their being converted to A-2's it was contemplated by Brunswick that the bowling center would be continued in operation, in order to win profits for the company or serve the other advantage indicated in that paragraph?

"Answer: I would think it would have been done to improve the revenues of Brunswick and to make a property more saleable in the event of disposition later on.

"It would have a better track record.

"Question: Do you know about how much it costs to convert an A-1 to an A-2 for a lane?

"Answer: I would like to ask counsel, is this a proper question for me to answer in the

[1413]

sense that if you mean costs, do you mean factory cost, total cost or what kind of cost? What we would sell them for?

"Question: Brunswick's cost. I will ask what you sell it for next.

"Answer: I can't give you a specific item. I would estimate, but others know this precisely, several hundred dollars per unit.

"Question: Yes.

"Who in the company would know this precise amount?

"Answer: Mr. Milton Rudo would know or could find out.

"Question: Do you know what the manufacturing cost for an original A-1 pinsetting machine is, not a conversion kit but the machine?

"Answer: As a matter of fact, when our A-2 development occurred, it was after our high period of production. I know what our costs were when we were making A-1's in large quantities.

"Question: Could you tell us what that figure was for an A-1?

"Answer: In the area of two thousand plus. That is just factory cost.

[1414]

"Question: Yes.

"Do you know what the sales price for an A-2 conversion kit is, or roughly?

"Answer: No, I really don't.

"Question: If I supplied the figure $2,000 would that appear right to you?

"Answer: I wouldn't care to answer that, sir, because I really don't know for sure.

"I could have this figure checked very readily for you.

"Question: Do you regard the A-2 as a substantial development or improvement in the art of pinsetting?

"Answer: I don't know whether, sir, I am qualified to answer this.

"But it was certainly from every point of view, namely, the proprietor and the customer, a more desirable machine to bowl against.

"Question: Do you know anybody in the world that is more qualified to answer that question than you are, sir?

"Answer: I don't know that anybody in the world can give you a precise answer.

"It certainly speeded up the game of bowling.

[1415]

"The reason I say that, sir, is at one point in time, as Mr. Lieblich only knows too well, there was a great demand by bowlers to get on bowling lanes. When that dropped off, the mere fact the machine was there, available to do the quicker job didn't, of necessity, mean more income to the proprietor, because there weren't enough customers, perhaps, to utilize that improved product."

Mr. Zucker: Moving to page 135, the center of the page, Mr. Hoffmann asked:

"Question: Was there, Mr. Bensinger, a time when the operation of bowling centers was a very prosperous and thriving—

"Answer: By Brunswick and its centers?

"Question: (Continuing.)—activity for bowling center proprietors?

"In other words, was there a time when operating bowling centers produced a large profit yearly for the operator?

"Answer: You are referring to proprietors, not Brunswick?

"Question: Proprietors, independent proprietors.

"Answer: Yes, I think at the outset they

[1416]

did very well.

"Question: By the outset, in years what period are you referring to?

"Answer: 1958, '59, '60, some in '61, some in '62.

"Question: Then did there come a drop-off in bowling?

"Answer: Yes, there came a drop-off. A drop-off developed in bowling.

"Question: When was that, '62 or '63?

"Answer: There were evidences of a decline in the latter part of '62, and it was accelerated in '63, further accelerated in '64.

"Question: From your knowledge of this industry, can you tell us what caused that drop-off?

"Answer: I think a variety of factors, sir.

"Question: Would you give us the principal ones?

"Answer: Inadequate capitalization of the proprietor, inadequate management of a trained and skilled nature. I think there was congestion in certain areas of establishments, a lack of coordination and cooperation as to requisite promotion and publicity.

[1417]

"There are a great many factors that entered into this.

"Question: Was over-building one of the factors?

"Answer: I indicated congestion.

"Question: I didn't hear you.

"Answer: I indicated congestion was one of the factors.

"Question: By congestion, you mean too many centers in particular bowling areas?

"Answer: Yes."

Mr. Zucker: That concludes the portions of the Bensinger deposition.

The Court: What's next?

Mr. Hoffmann: The next witness, Mr. Golobic.

REX MARTIN GOLOBIC, called as a witness on behalf of the Plaintiffs, being duly sworn, testified as follows:

[1418]

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Golobic, where do you live?

A. San Francisco.

Q. Do you have a place of business?

A. Yes, I do.

Q. Where is that?

A. I have an establishment—a bowling establishment in San Francisco, one in Colma, California, and one in Mountainview.

Q. And what is your relationship to those establishments you just mentioned?

A. I am the proprietor.

Q. Mr. Golobic, are you here testifying under subpoena?

A. Yes, I am.

Q. Do you have the subpoena with you?

A. I have it in my briefcase.

(Document given to counsel.)

Mr. Hoffmann: May I have the subpoena sent to Mr. Golobic marked as an exhibit.

(Exhibit P-56 marked for identification.)

Q. Mr. Golobic, I show you Plaintiff's Exhibit 56 for identification and ask if that is the subpoena you just referred to in your testimony?

A. Yes, it is.

[1419]

Mr. Hoffmann: I offer it in evidence.

Mr. McNeill: No objection.

The Court: P-56.

(Exhibit P-56 received in evidence.)

Mr. McNeill: Do you have an extra copy that I can have?

(Document given to counsel.)

By Mr. Hoffmann:

Q. Mr. Golobic, are you testifying here in your capacity as a proprietor, an individual proprietor?

A. Yes, I do.

Q. Are you testifying in any other capacity?

A. Yes, as president of the Bowling Proprietors Association of America.

Q. What is the Bowling Proprietors Association of America?

A. It is a trade association of proprietors in the whole United States.

Q. With membership throughout the United States?

A. Yes.

Q. And about how many of the proprietors are represented in the Association?

A. About 50 percent.

Q. Can you tell us, in terms of number of lanes,

[1420]

or number of proprietors, what the total number in the United States is?

A. The total number in the United States?

Q. Yes.

A. It is about 6500 proprietors and about 123,000 lanes.

Q. And your association represents approximately half of that, is that what you said?

A. That is correct.

• • •

[1425]

Q. Now, sir, when did you first become a member of the Professional Bowlers Association of America?

A. I can't tell you the exact year. It was in, I think, 1958, 1959, I'm not sure exactly when it was organized.

Q. When did you first hold a directorship or office in that association?

A. You say the Professional Bowlers Association?

Q. No—did I?

A. Yes.

Q. I'm terribly sorry. The BPAA, Bowling Proprietors Association of America.

A. I first became a director in 1963.

Q. And in 1965 what function did you have in that organization?

A. I was a director.

Q. As a director of the association did you attend a meeting of that association in San Juan, Puerto Rico, during the year 1965?

A. Yes, I did.

Q. Can you tell us, sir, from your memory whether or not anything unusual happened in the course of that meeting?

A. Mr. Hanigan of the Brunswick Corporation made an announcement which caused a great stir, indicating that

[1426]

Brunswick was entering into the bowling center operation business.

• • •

[1438]

Q. Mr. Golobic, were you present at the meeting in San Juan?

A. Yes, I was.

Q. And did you become familiar with 14 points made by Chairman Hanigan of Brunswick at that meeting?

A. Yes, I am—I was.

Q. And addressing yourself to the meeting in San Juan in 1965, did Mr. Hanigan address the meeting there?

A. Yes, he did.

Q. And was his address made in an open assembly of the meeting?

A. Yes, it was.

Q. Was the membership represented in any sizeable number at that meeting in San Juan?

A. Yes, it was.

Q. Can you give us any estimate of the number of representatives there?

A. No, I'm sorry, it was probably 300 people.

Q. Was the address of Hanigan made in a big

[1439]

hall of some sort?

A. Yes, it was.

Q. Where is that, do you know the place?

A. The Sheraton Hotel, I believe.

Q. Was it the main dining room or ballroom of that hotel?

A. Ballroom.

Q. And does your recollection tell you whether or not that ballroom was filled with people when the remarks were made?

A. I believe so.

Q. Do you have in your hand a copy of the Bowling Proprietor magazine?

A. Yes.

Q. What is the date of that, sir?

A. July-August 1965.

Mr. Hoffmann: Your Honor, the witness has in front of him P-27, Plaintiff's 27 in evidence, and I want to ask him some questions as to that document has it has been admitted.

Q. Now, looking at that magazine report—may I see it for a moment?

A. Yes.

Q. Would you hold it up, please?

Mr. Hoffmann: May we have a stipulation that

[1440]

this magazine report is the same as P-27?

The Court: Mr. McNeill?

Mr. McNeill: It appears to be, yes.

Mr. Hoffmann: Will you take a look at it, please?

Mr. McNeill: Yes, it is the same.

Mr. Hoffmann: Thank you.

By Mr. Hoffmann:

Q. Now, does that Bowling Proprietor report of Hanigan's remarks fairly report the remarks as you heard them in 1965?

A. It says that they are the literal report as he said it.

Q. Do you have any contrary recollection?

A. No.

Q. In other words, do you think this report to be accurate?

A. Yes, I do.

Q. In reporting the remarks that you heard there; is that right?

A. Yes.

• • •

[1455]

MORNING SESSION.

(The following proceedings were had without the hearing or presence of the jury:)

The Court: Before court adjourned yesterday the question of the admissibility of a certain corporate resolution arose.

The resolution reads as follows:

"Resolved, that we, the members of the Bowling Proprietors Association of America, hereby express our grave concern that the incursion of the Brunswick Corporation into the area of operation of bowling centers in direct competition with members or non-members of this Association is not in the public interest and is injurious to competition based upon its pre-eminent position as a manufacturer, supplier, major creditor, and financier of the bowling industry."

In this Court's view this statement is inadmissible because it is, one, not rationally based on the perception of the witness; two, is not helpful to the trier of the fact on the determination of the issue in question.

As support for its ruling the Court cites Wigmore On Evidence, Sections 1917 and 1924,

[1456]

McCormack On Evidence, Section 12, Jones On Evidence, Section 14.2, 14.3, Rule 701 of the Proposed Federal Rules on Evidence, and Rule 56-1, 56, Subsection (1) of the New Jersey Rules on Evidence.

The Court will permit the witness to testify to the fact that the resolution was passed, and expressing grave concern on the part of this association over the incursion of Brunswick into the operation of the bowling centers, but not the contents of the resolution itself.

So ordered.

Bring the jury down, please.

REX MARTIN GOLOBIC, having been previously duly sworn, resumed the stand and testified further as follows:

(The jury entered the courtroom, and the following proceedings were had within the hearing and presence of the jury:)

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

The Court: You are still under oath, Mr. Witness, right?

The Witness: Yes, your Honor.

Q. Mr. Golobic, you will recall that at the

[1457]

close of yesterday's session I was asking you questions concerning the so-called 14 points read by Mr. Hanigan at the meeting in San Juan, Puerto Rico, in 1965?

A. Yes.

Q. I'd like to address your attention a little bit further to those points.

Would you be good enough to look at point number 4. You will find it on the second page.

A. Yes.

Q. The first part of it, "Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in each case that the location could support such establishment without imperiling the business of any existing establishment in the area."

Do you know what that means?

What does it mean to you?

A. I really don't think it means anything because based on the surveys that were made in the '50's and '60's when centers were being installed, it seemed like the surveys could be made to say almost anything anybody wanted them to say, and as a consequence, I really don't think that number 4 said anything, because

[1458]

surveys are surveys, who collects the data and how it is presented indicates—can indicate almost anything.

Q. Would you look at item number 9, please:

"Any advertising or promotional aid given by Brunswick Corporation to its own bowling establishments apart from local advertising or promotion charged to the operating expenses of such establishments should be made available on a proportionately equal basis to all other bowling establishment operators who are Brunswick customers."

Sir, what does that mean to you?

A. Well, I understand what it means, but it doesn't seem to me like it ever operated very well because I cannot recall——

Mr. McNeill: Excuse me, your Honor. The question was what does it mean. The witness gave the answer. I think he should wait for the next question.

The Court: Would you read that back, please?

(Record read.)

The Court: "I understand what it means," period. The rest of the answer will be stricken and the jury will be instructed to ignore it.

[1459]

By Mr. Hoffmann:

Q. Mr. Golobic, in your opinion, has this operated, in fact?

Mr. McNeill: I object to this, your Honor, as asking for an opinion as to what actually happened. It hasn't been established that the witness has any knowledge one way or the other as to whether at this particular point it was operative.

The Court: Mr. Hoffmann.

Mr. Hoffmann: Your Honor, I thought it had been well established yesterday that this witness, who is the president of the Bowling Proprietors Association of America, who has held numerous offices in other associations, who travels around the country for these associations, has been made well aware of conditions in the bowling industry, and if anyone is entitled to have an opinion it would seem to me that he has.

But in order to avoid the problem, it seems to me, I can simply ask him whether, in his own experience, this provision has operated.

The Court: I will sustain the objection. I will permit the first question to be answered. Perhaps he has experience throughout the country,

[1460]

too. I will permit that question to be answered. Based on your own experience.

Q. Based on your own experience, has this provision operated, in fact?

A. One of the large programs that Brunswick has put out for their own bowling centers is a program where

a trip to Europe is offered as a prize. And at no time has anyone ever offered me part of that program in one of my bowling centers.

Q. So that when reference is made in nine to the advertising or promotional aid of Brunswick being made available on a proportionally equal basis to all other bowling establishment operators, who are Brunswick customers, can you say from your experience whether or not such advertising aids were made available to you?

A. No, they were not.

Q. Now, sir, what did you take was the meaning, the main sense that was being conveyed to you by the remarks of Mr. Hanigan in that meeting in Puerto Rico in the Summer of 1965?

The Court: You heard my ruling on that, right, Mr. Witness? You were in the courtroom when I made my ruling?

The Witness: Yes, your Honor.

Q. What was Mr. Hanigan conveying, as you under-

[1461]

stood it, in the course of that meeting of the proprietors in 1965?

A. Mr. Hanigan was telling us that he had heard a great number of objections to Brunswick entering into the operation of bowling centers, and that he had heard that many proprietors were disturbed about the subject, and, as a consequence, he had gone to his legal counsel and asked him to tell him how they could operate bowling centers without getting in trouble with the law.

Q. And did you understand that the statement made by Mr. Hanigan was such statement, he was telling proprietors how they could do that, how Brunswick could do that?

A. That's what he was telling us, yes.

Q. How was this statement of Mr. Hanigan's received by the proprietors, sir, was there any reaction at that meeting?

A. Well, the proprietors——

Mr. McNeill: Your Honor, I will object to that, unless it is more carefully asked.

The Court: I will sustain it as to form. Rephrase it.

Q. Tell me, Mr. Golobic, what happened after Mr. Hanigan sat down, do you remember?

[1462]

A. A great deal of discussion occurred among the people who were there in the audience about Mr. Hanigan's remarks.

The Court: Was there clapping?

The Witness: No, sir.

The Court: No applause.

The Witness: It was a very dead silence, I must say.

A. (continuing) And the discussion continued throughout the balance of the meeting, and eventually resulted in a unanimous passage of a resolution in which the Bowling Proprietors Association expressed grave concern in the incursion of Brunswick into the operation of bowling centers.

[1463]

Q. Tell me, was that resolution adopted by the association?

A. Yes, it was adopted unanimously.

Q. Did that resolution constitute a statement of policy of the association?

A. Yes, it did.

Q. Is that policy still in effect?

A. It has been discussed many times and it has never been rescinded. In fact, there has been very great movement toward making it more——

Mr. McNeill: Your Honor, I——

The Court: Just a minute.

Yes. I am listening.

Mr. McNeill: I move to strike——

Mr. Hoffmann: Can't we have the end of the answer before he moves to strike it?

The Court: What did he say so far?

(Incomplete answer read.)

Mr. McNeill: Your Honor, this answer should be stricken. A simple answer to the question is: No. When the witness begins to testify about discussions outside the presence of any representatives of Brunswick, we have a hearsay problem.

Mr. Hoffmann: Your Honor, it is a new rule to me, not supported by any authorities that I know

[1464]

of, that the witness is required to make simple answers to questions. Maybe certain witnesses only can make simple answers to questions. But I know of no such rule of evidence.

The witness is making an explanation, he is telling what happened. Either his answer is objectionable, in terms of established rules of competency, relevancy, materiality, or it is not objectionable at all. It is not objectionable at all, it seems to me, with great respect——

The Court: I will permit him to answer, subject to it being stricken.

Do you want your answer so far?

The Witness: Yes, please. I don't remember it.

(Incomplete answer re-read.)

A. (Continuing.)—in detail and more stringent in its concern about the incursion into the operation of bowling centers.

The Court: I will permit it to remain.

By Mr. Hoffmann:

Q. Now, Mr. Golobic, what are your duties as president of the Bowling Proprietors Association of America?

A. I travel around the country and attend meetings on

[1465]

a great many different subjects, participate in forums for the National Bowling Council, participate in the business of our association.

For example, we are now buying a piece of property and moving our office. I travel to Texas for that subject. I am going to speak before the American Bowling Congress and the Women's International Bowling Congress.

Q. You are also a proprietor of bowling centers, are you not?

A. That is correct.

Q. About how much of your time is devoted to the activities of the Bowling Proprietors Association of America?

A. At least 50 per cent of the seven-day week.

Q. And in that 50 per cent you travel about the country speaking to bowling proprietors, is that right?

A. Yes, I do.

Q. And in the course of doing that, do you, as the representative of the Bowling Proprietors Association of America, as the president of the association, receive reports from proprietors as to the state of affairs in the bowling business?

A. I receive reports and complaints, probably more complaints than reports.

Q. Do you receive the complaints pretty regularly

[1466]

when you travel around?

A. Yes, it is almost always a subject of discussion of a complaint of some kind, about either the operation of the association, or of our suppliers, or of the media, or something of that kind.

Q. Were you present at an association meeting in the following year after San Juan, in 1966, in San Diego, California?

A. Yes, I was.

Q. At that meeting did the members of the association take the floor and speak about the subject of Brunswick coming into the bowling business, the bowling operating business?

The Court: I will permit an answer yes or no.

A. Yes.

• • •

[1480]

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(The following question was read back by the court reporter:

"Question: Did you receive at or about that time, at about the time of San Diego, any reports or complaints from members of the association concerning the presence of Brunswick in the bowling operating business?")

The Court: Answer that yes or no.

The Witness: Yes.

The Court: Now I will permit you to ask him based on his experiences. No hearsay.

[1481]

By Mr. Hoffmann:

Q. Carrying on after that time and carrying on to the present, have you received similar complaints?

A. Yes, I have, our people are afraid—

The Court: Just a minute. Don't volunteer any information.

That will be stricken and the jury is instructed to ignore it.

He said "Yes."

Next question.

Mr. Hoffmann: He said, "Yes—"

The Court: Well, I don't want to repeat it in front of the jury because I don't think they heard it, but I did.

"Yes." The rest will be stricken.

Q. Tell us, there has been a good deal of testimony here about leagues and teams and league bowling. What is a league?

A. A league is a group of people who band together in teams and bowl in competition each week.

Q. Is there any customary number of teams in a league?

A. Yes—number of teams?

Q. Yes.

A. I would say that the number ranges generally from

[1482]

eight to sixteen teams.

Q. Now, is there any custom or tradition, standard, in the industry, having to do with the question of whether or not league bowling should take place all at one time?

A. Yes. Many years ago when the American Bowling Congress was first being formed, in setting up their rules there was a controversy between the part of the organization that was based in the New York area, and the part of the organization in Chicago.

In New York the custom had been for two teams to bowl at a time, and leagues might have 40 or 60 teams, and two teams would bowl at a time, and many times it took more than a year for each—for one team to bowl all of the other teams in the league.

In Chicago, the custom had been for all of the teams in the league to bowl at the same time. And this was eventually the rule that was adopted, that all of the teams in the league would bowl at the same time.

[1483]

Q. What organization adopted that?

A. American Bowling Congress.

Q. In your experience is that rule generally followed?

A. Yes.

Q. Now, sir, suppose the existence of a bowling center with some of the lanes on one floor and other lanes on

another floor; is that the kind of a situation that could happen?

A. Yes. I have an establishment that is made up that way.

Q. Now, can you tell us from your experience whether or not if there are so many teams in a league, that they cannot all play at one time on one floor, whether the fact that they have to break up and play on two floors will discourage their coming to your center?

A. We have had occasions where leagues have attempted to do that with part of their teams bowling on one floor and part on another, and almost invariably they either leave our center or else they contract the number of teams so that they all fit together.

Q. What is the reason for that?

A. Well, the basis of league bowling is competition, and they all like to see how the other teams are doing.

[1484]

The team in first place likes to see what the team in second place is doing, and if they are on separate floors they can't see what anybody else is doing.

Q. Now, then, can you tell us from your experience whether if you have a vast expanse of lanes on the same floor, but the colonnade is broken by pillars, and for the league to bowl all at once it is necessary for the teams to bowl on both sides of the open center area, in such a situation would that deter leagues from coming to the establishment?

A. We have a center in San Francisco, Daly City, that has that sort of situation, and they have a great deal of difficulty scheduling the teams to bowl even though the only thing they'd be separated by was a wall.

Q. In terms of your experience, can you tell us what is shown as to the way bowling patronage breaks between open and individual bowling, and league bowling?

A. At present in my experience it breaks about 40 percent open play and 60 percent league play.

Q. And by "open play," what do you mean?

A. I mean non-organized play, but people coming in to practice or bowling socially. Not in league play.

Q. Now, in the course of an evening, how many games, if you know, are played in a league match?

[1485]

A. If it is a five-man team, generally each bowler bowls three games.

Q. And does that mean that there have been 15 games for each team?

A. Yes, it does.

Q. And then in a match, if there are two teams meeting each other, there would be 30 games; is that right?

A. That's right, on a pair of lanes.

Q. What is the average time that elapsed in the playing of a game with A-1 Brunswick pinsetter equipment?

A. Two and a half hours.

Q. And how about for the individual game, that is, the individual bowler bowling his ten frames?

A. There are about six games bowled an hour on a lane average, so if they bowl 15 games an individual, one individual would take about 10 minutes to bowl a game.

Q. And does there exist any difference, timewise in having a league match when A-1 equipment is used and A-2 equipment is used?

A. Yes, there is.

Q. Can you give us any estimate of that?

A. I would say that the A-2 could speed the league

[1486]

match up by 15 minutes or 20 minutes.

Q. Are you familiar with the Brunswick automatic scorer?

A. Somewhat, yes.

Q. Have you seen it in operation?

A. Yes, I have.

Q. Could you describe it for us, please?

A. It is a machine that keeps score on four lanes simultaneously.

It projects the score above each lane.

The bowler--the score is kept automatically.

Q. Pardon me, my colleague says he has a little trouble hearing you.

A. I'm sorry.

It is a machine that keeps score on four lanes simultaneously, and the score is projected above each lane, and the scoring is automatic, except for the fact that the bowler must move a lever to his position on the--in the bowling match.

Q. Does this eliminate the old chalk and the blackboard that I knew a hundred years ago when I was younger?

A. Yes.

Q. Paper and pencil scoring on sort of a pad?

A. Yes.

[1487]

Q. Errors in arithmetic, are they eliminated; do you have to compute a spare as a strike and an eight pin going down, or something like that?

A. Most generally.

Q. Do you look up and see what the score is?

A. That's right.

Q. Is that an expensive piece of equipment, do you know?

A. Yes, it is—I think it is.

Q. Do you know how much it sells for?

A. About $12,000 for a machine that covers four lanes.

Q. Are you able to install such equipment in your own bowling centers?

A. Yes, I could.

Q. Have you done so?

A. No.

Q. Why is that?

A. I haven't felt like I could afford it.

Mr. Hoffmann: Excuse me one second, your Honor.

Q. You have in your hand a pamphlet called, "Let's Talk Facts"?

A. Yes.

Mr. Hoffmann: May we use the exhibit——

The Court: Designated as Exhibit P-28?

[1488]

Mr. Hoffmann: Plaintiff's 28. Pamphlet called, "Let's Talk Facts."

Q. Have you ever seen this or a copy of it in the same identical form before?

A. Yes. I received a copy of it at the Bowling Proprietors Association convention in San Diego in 1966.

Q. Have you had occasion to examine it, think about it?

A. Yes, I have.

[1489]

Q. I address your attention to page 5 of Plaintiff's Exhibit 28.

I read, "Brunswick's policies that are the subject of this report were developed after two years of careful top management consideration and it has since been in effect for 18 months. We believe these policies are beneficial to everyone in the bowling industry, especially to you, the proprietor."

Can you tell by looking at these facts what the policies are to which this reference is made?

A. Yes. This is a reiteration of—of a repeat of 14 points in general that Mr. Hanigan had told us about the previous year.

Q. Now, addressing yourself to the sentence which says:

"We believe these policies are beneficial to everyone in the bowling industry, especially to you, the proprietor," tell me, Mr. Golobic, did you find these Brunswick policies beneficial to you as a proprietor?

Mr. McNeill: Your Honor, I object to the question. There has been no foundation laid as to whether the policies ever affected Mr. Golobic in his business one way or the other. And if the question is meant to ask for his opinion as to how these policies may have affected others, I would

[1490]

object on the grounds of incompetent, irrelevant opinion in this matter.

Mr. Hoffmann: Certainly there is nothing in the question which had anything to do with anybody other than Mr. Golobic.

The Court: Lay the foundation with regard to what policies you are speaking about.

I will sustain it.

Mr. Hoffmann: I had asked the question—

The Court: Are you familiar with the policy, and he said the 14 points.

Mr. Hoffmann: Yes.

By Mr. Hoffmann:

Q. Would you look, please, at the index for "Let's Talk About Facts," it is found right on page 5.

"The general fact, one, Brunswick is protecting your investment in the bowling industry."

Then "Fact 2, Brunswick is enforcing conditions of sale.

"Fact 3, Brunswick has found it necessary to operate bowling centers.

"Fact 4, BCO centers are offered for sale.

"Fact 5, Brunswick is the Number 1 name in bowling," and then something called a closing statement.

That's the index, is it not?

[1491]

A. Yes.

Q. Then if you just quickly go—flip to it, you find further headings:

"1, a firm price policy, a firm down payment policy."

These are matters referred to in the 14 points about which there was testimony earlier, are they not?

A. Yes.

Q. These are legal standards under which Brunswick said it would operate its bowling center business; isn't that so?

A. That's right.

Q. And then "Down payment plans, 30 per cent or more, 15 per cent plan," and then a great big heading, "As a matter of fact, Brunswick is enforcing conditions of sale."

Then heading beneath, "Brunswick has found it necessary to operate bowling centers. What happens before BCO decides to operate, legal and ethical guidelines govern BCO operating policy."

Other headings, "Including lineage rates," and then "BCO centers are offered for sale, how is price determined?" Things of that order.

And then a heading, "BCO is benefitting the bowling industry."

[1492]

Can we pause here for a moment?

This is on page 15. The statement is made:

"It is also BCO policy not to hire management personnel away from other bowling centers, but to recruit and train new people."

Do you know, Mr. Golobic, whether or not BCO has in fact hired management personnel away from other bowling centers?

The Court: I will permit that.

A. Not to my knowledge.

[1493]

Q. The answer is you don't know?

A. No, I don't know.

Q. Now, coming back to the final page, 18, what is called in the index a summation, "To the bowling proprietor, there is but one purpose for this report, and that is to resolve in your mind the position of Brunswick in the

bowling industry today, that our position required clarification is clear. The preceding pages should bring this position into sharp focus and re-emphasize this point. Brunswick is not about to relinquish its title as the Number 1 name in bowling."

And then you notice beneath the signature of James F. Urbanek, president of the bowling division, Brunswick Corporation.

I ask you, sir, do you understand the meaning of the statement, "That our position required clarification is clear"?

A. Yes, I do. Their position as previously put forward wasn't believed.

Mr. McNeill: I move that that answer be stricken. That contains within it clear hearsay and opinion of others who are not present in this court.

Mr. Hoffmann: Your Honor, this document is in evidence. Shall we leave it with the ambiguity

[1494]

that Mr. Urbanek left the document in, or shall we explore what this witness——

The Court: Will you read that back, please?

(Record read.)

Mr. McNeill: Your Honor, this was put in by plaintiffs in the case, this statement of Brunswick, and there is nothing ambiguous or unclear about the text.

Mr. Hoffmann: Perhaps Mr. McNeill will tell us what Mr. Urbanek said when he said a need for explanation——

Mr. McNeill: I think it is highly improper. I have objected to this witness giving his opinion or stating what others opined about it.

The Court: The answer will be stricken, what they believed.

By Mr. Hoffmann:

Q. What do you believe, Mr. Golobic?

A. I thought that the first presentation left a great deal of doubt in my mind, and when I saw this folder I thought that some—that there be some doubt in Brunswick's mind that what they had said previously had been understood and believed.

Q. Did you know what was meant by the statement at the end of that paragraph, "Brunswick is not about

[1495]

to relinquish its title as the Number 1 name in bowling"; what does that mean to you?

A. Brunswick was the Number 1 name in bowling, and they expected to continue the Number 1 name in bowling, and so far as I am concerned, they still are.

Q. Well, now, we have gone through "Let's Talk About Facts," Plaintiff's 28 in evidence, and I bring it back now to the first paragraph that I asked you about on page 5, with reference to Brunswick's policies, "We believe that these policies are beneficial to everyone in the bowling industry, and especially to you, the proprietor."

How about you, you individually, you individually as a bowling proprietor, did you find these policies described in this pamphlet beneficial to you?

A. I couldn't——

The Court: Just a minute.

Mr. McNeill: I object. First of all, that's been asked and answered. And what this witness believes one way or the other about the beneficial effects or otherwise of all of these various policies and the various activities of Brunswick since 1965 or 1966 are incompetent and immaterial in this trial.

There has still been no showing that this

[1496]

gentleman in his business operations in San Francisco has been exposed one way or the other to any operations by a Brunswick operated bowling center.

He simply talked to others as far as the evidence so far goes.

Mr. Hoffmann: Your Honor, in response to Mr. McNeill's previous objection I have taken at least ten minutes of the Court's time in laying the foundation by description from the pamphlet itself as to what the policies described were.

As to Mr. McNeill's second objection, I have not asked Mr. Golobic about complaints of others or anybody but himself.

I asked him whether he, and I was very careful about it, whether he, Mr. Golobic, himself as a proprietor, had found these policies beneficial, and that's the question to which Mr. McNeill objected to.

It has got nothing to do with the complaints you are worried about or the actions of other people or anything of that sort.

Mr. McNeill: I think that perhaps Mr. Hoffmann misunderstands my objection.

As I understand the testimony so far, this

[1497]

gentleman as a bowling proprietor has business operations in the San Francisco area.

Now, before he can give an opinion one way or the other or state anything with respect to the various policies of Brunswick as an operator of bowling centers, some foundation must be laid that indeed he

has experienced competition by a Brunswick operated bowling center.

If, indeed, your Honor, he has not experienced any competition by a Brunswick operated center, how can he be competent, how can he testify about the experience he has had with Brunswick policies?

The Court: Yes, but in this P-28 that's been admitted into evidence there is a statement here on behalf of Brunswick, "We believe these policies are beneficial to everyone in the bowling industry, especially to you, the proprietor."

The witness is a proprietor.

Now he is asked the question, was it beneficial to you?

No, overruled. I will permit it.

You can cross-examine as to it.

Can you answer it?

The Witness: I didn't find it beneficial. In fact, I didn't——

[1498]

The Court: Period. You didn't find it beneficial.

The Witness: I didn't find it beneficial.

By Mr. Hoffmann:

Q. Did you find it hurtful in any way, the policies, to you as a proprietor?

A. No.

Q. Were they a matter of indifference to you, these policies?

A. No, they were a matter of great concern.

Q. And why was that, sir?

A. Because I was afraid that in the future they would become hurtful to me.

Mr. McNeill: I move that the answer be stricken.

The Court: Why? He said he hasn't been hurt to date, he is concerned about the future.

Mr. McNeill: Comments like that, as to what might happen in the future, or whether the chandelier may fall down, and so forth, are not competent evidence in this trial.

The issue is as to whether Brunswick has done something that offends the antitrust laws or whether indeed everything that has happened up to this moment has been well within the antitrust laws and

[1499]

proper business practices.

Mr. Hoffmann: Your Honor, the case involving loose chandeliers in which chandeliers fall and hit people over the head I would submit is quite relevant to the fact that somebody is worried about the chandelier being about to fall on him.

And this is a case in which we are concerned with the monopoly practices of Brunswick, and the witness apparently is concerned that the monopoly practices are about to fall on his head and hurt him.

The Court: I will permit it to remain. Next question.

(Record read.)

By Mr. Hoffmann:

Q. Now, did your fear have any specific outline, any specific concept that you can tell us?

A. I spent a great deal of time chasing down rumors that Brunswick was going to build a center adjacent to one of my centers, and was very afraid that they were about to.

I heard they had field representatives out looking for real estate and were contemplating building a center near me.

The Court: But it did not happen, right?

The Witness: It hasn't happened so far.

[1500]

Q. Mr. Golobic—excuse me one second—you agreed a moment ago in the statement of Mr. Urbanek's near the end of "Let's Talk Facts" that Brunswick is not about to relinquish its title as the Number 1 name in bowling.

Do you agree that Brunswick is the Number 1 name in bowling?

A. Yes, I do.

Q. Can you tell us the basis for that opinion?

A. In all my life in the bowling business, Brunswick has been the top supplier.

They have had the best equipment, they have had the best designed equipment, they have had the best looking equipment.

In my estimation they still do. And they have sold most of the market based on their superiority.

• • •

[1504]

CROSS-EXAMINATION.

By Mr. McNeill:

Q. Mr. Golobic, you are a bowling proprietor in the San Francisco area?

A. That is correct.

Q. And are you familiar with many bowling centers in the northern California area?

A. Yes, I am.

Q. Do any of those centers that you are familiar with have A-2 fast ball return equipment in them?

A. Yes, they do.

Q. Can you estimate the number or the precentage of centers that have A-2 equipment?

A. No, I can't.

Q. Is it more than a handful, more than a few?

A. There are several. I don't know—more than a few, yes.

Q. Are there other manufacturers of fast ball returns?

A. Yes.

Q. Are you familiar with the Zot fast ball return?

[1505]

A. Yes.

Q. And with QBR?

A. Yes.

Q. And with equipment called Fast Ball?

A. Yes.

Q. Are centers in the California area equipped with some of those machines as well?

A. Yes, they are.

Q. What about scorers; you testified a little bit about familiarity with the scorer—automatic scorer manufactured by Brunswick; have you seen any centers that contains such scorers?

A. Yes, there are two that I am very well acquainted with.

Q. In the California area?

A. Yes, Park Bowl in San Francisco and McHenry Bowl in Modesto.

Q. Is either of those centers operated by Brunswick?

A. No.

Q. Are there other manufacturers of automatic scoring machines coming on the market?

A. No, not that I—not automatic in the sense that the Brunswick machine is, so far as I know. I haven't seen any.

[1506]

Q. I see.

Mr. Golobic, do you believe in promotional efforts by bowling proprietors to help increase their business?

A. Absolutely.

Q. Over the years have the local and national association of bowling proprietors participated in various promotional—group promotional efforts?

A. Yes, definitely.

Q. Has Brunswick helped support such efforts, locally and nationally?

A. Yes.

Q. Have they also helped contribute to the local promotion in the California area which results in bowlers—some bowlers qualifying for a trip to Hawaii?

A. That I am not acquainted with.

Q. I see.

Sir, has the bowling business generally been good for the last year?

A. Yes, definitely.

Q. And getting better, in your opinion?

A. It has been getting better again since the first of January. We had a little downswing during last Fall. But it has been coming up again.

Mr. McNeill: Thank you, Mr. Golobic.

• • •

[1507]

Mr. Hoffmann: My colleagues, Mr. Agee and Mr. Zucker, with your Honor's leave, will read the deposition taken from Mr. Hanigan.

The Court: All right.

(Mr. Agee took the witness chair to read the answers to the questions as read by Mr. Zucker:)

• • •

[1510]

Mr. Zucker: "Mr. Hoffmann called Mr. Hanigan's attention to a portion of this memorandum of March 1966 which reads:

[1511]

"As we have discussed many times, the yearly five-year plan should be a constant objective of each division with almost daily thinking about the long-range aspects of your business.

"Is this your thinking that is expressed here?

"Answer: Yes.

"Question: And does it apply to the BCO division as well as to other divisions of Brunswick?

"Answer: Yes, sir.

"Question: And is it contemplated by this sentence that the division, BCO division should think of itself as having business with long-range aspects?

"Answer: Yes.

"Question: And by long-range, do you include the notion that the division's business might project beyond the period covered by the five-year plan due July 1st of that year, of 1966?

"Answer: Yes; it also might not.

"Question: Did you have in mind any period of duration for the Brunswick operation of bowling centers at the time of your sending out this memo-

[1512]

randum on March 17, 1966?

"Answer: No, sir.

"Question: Do you know now—do you have now?

"Answer: Not a fixed idea, no.

"Question: Well, do you have any idea that Brunswick will in the future go out of the operation of bowling centers?

"Answer: I haven't really come to any conclusion.

"Question: That is an open question within the councils of Brunswick?

"Answer: Yes, sir.

"Question: I address your attention to 8 for identification, did I understand your testimony before to be that you had not seen this before?

"Answer: I don't recall having seen it.

"Question: Would I be correct in my characterization that it appears to be a draft or a statement of objectives to be included in the 1966-'71 five-year plan?

"Answer: That's what it appears to be.

"Question: You have no knowledge at this time of who the author of this document is?

"Answer: No, sir.

[1513]

"Question: If it is important for us to find that out, can you tell what person in your organization would best know who authored this document?

"Answer: I would expect Mr. Rudo, Milton Rudo.

"Question: And what is his function—pardon me, what was his function in the organization in 1966, March?

"Answer: Well, he was manager of the bowling center operations, for sure, and may have at that time, I am not sure, also been responsible for the operation of the bowling division. I am not exactly sure when that additional responsibility—

"Question: Does he still possess those functions?

"Answer: He does."

Mr. Zucker: "Turning again to this attachment to the Hanigan memorandum.

"Question: Now, would you be good enough to address your attention to 8 for identification again, and notice, please, the language appearing after the listing on number of establishments for domestic and Canadian: 'These establishments will

[1514]

be available for private interests to purchase and operate in the year 1967. In 1970 and 1961 much of our projection includes new installations using used equipment.

"Do you know whether in fact these establishments referred to were available for private interests to purchase and operate in the year '67?

"Answer: They were.

"Question: And can you tell us from your memory whether private interests did in fact purchase

and operate some of those establishments during that year?

"Answer: My memory is faulty, but some establishments were purchased by private interest; whether it was '67 or '66, I cannot remember.

"Question: Are you able to tell us how many?

"Answer: No; but few.

"Question: And who could best tell us who those few, or what those few were?

"Answer: Mr. Rudo; Mr. Milton Rudo."

Mr. Zucker: "Starting at page 24 Mr. Hoffmann asked the question of Mr. Hanigan—

"Question: In between the submission of five-year plans, are there meetings from time to time to consider projections of business into

[1515]

the future, that is to say, past the existing five-year plan?

"Answer: There are sometimes meetings to try and determine the directions the business should take.

"Question: Well, when a five-year plan is submitted, is it voted upon for adoption summarily?

"Answer: No.

"Question: Is it submitted for your approval as president of the company?

"Answer: It is submitted to a group, which changes from year to year. It is not approved formally, but many times it is disapproved by being sent back to be reconsidered.

"Question: Is there, in the event of such disapproval, a final forging or working out of a five-year plan that meets with the approval of the group?

"Answer: Yes, yes.

"Question: And when a five-year plan is approved by the group, does that have any operative force? Is it regarded, say, by managerial people as a charter for what the division should do during the ensuing five years?

[1516]

"Answer: There are two documents which are prepared by the division. One is the five-year plan, which is a plan subject to change without notice. There is also a budget for the ensuing year which is a commitment on the part of a division manager that he will produce so much in the way of operating margin. But a plan being a plan, the only sure thing about it is that it will be changed.

"Question: This group to which the plan is submitted, what is its—who are its members?

"Answer: It varies from year to year. It always includes members of my staff, the comptroller of the corporation, the financial vice president, the administrative vice president, vice president for engineering, senior vice president, and three or four managers of the operating division."

Mr. Zucker: "Turning to page 35, Mr. Hanigan is referred by Mr. Hoffmann to the five-year plan previously referred to which was prepared during the middle of 1965 and projected Brunswick objectives for the five years 1966 through 1970.

"Question: Again, sir, if you will turn over to the next page where you have—I am

[1517]

sorry, turn over two pages, where you have 'B-Plans for Meeting Objectives,' objective No. 1.

"Answer: Yes.

"Question: I note the block type heading, has the bowling operating division of Brunswick realized that objective, that is to say, to become the domestic, Canadian and International retail operating division for Brunswick?

"Answer: It is not operating internationally, no, sir; unless you consider Canadian international.

"Question: But in other respects, that is, domestically, in Canada it is the retailing operation?

"Answer: It is.

"Question: Looking to the Item A, 'During '65, we plan to acquire and operate a hundred five bowling establishments, and so forth. Do you know whether that was realized?

"Answer: I believe it was, approximately, I don't know exactly how many were repossessed and operated.

"Question: And next, 'We should have all key positions of the division staff filled in '65.' Can you tell us whether key positions were provided for the division sufficient to handle

[1518]

more than the hundred five bowling establishments in the United States and Canada during that period?

"Answer: No—actually, you can't cut a controller in half; and consequently, we are all under-staffed to some degree at this time.

"Question: Would the same be true if you handled more bowling establishments than you now have?

"Answer: If we handle more bowling establishments, we would not have to add staff.

"Question: And just as you can't cut up a controller, can you tell us how far you can extend a controller to take on additional bowling establishments?

"Answer: I cannot.

"Question: How about other key personnel, have you any judgment about how far they can go without addition and handle additional establishments?

"Answer: It would be my opinion, and it is only an opinion, that the BCO might be able to handle, oh, sixty to a hundred percent more than the hundred and sixty or seventy establishments that they are now handling.

"Question: Is it also your opinion that

[1519]

there is now in this division a number of skilled people experienced in the operation of bowling centers and also in handling home office problems in connection with such operations?

"Answer: Yes, sir.

"Question: Would you address yourself to little (b) on that page.

"Answer: Yes.

"Question: Can you tell us whether I am correct in understanding from your previous testimony that Brunswick has abandoned the suggestion that it move world-wide in operating bowling establishments?

"Answer: We are operating bowling establishments world-wide.

"Question: Other than in the United States and Canada?

"Answer: Yes, sir.

"Question: Then——

"Answer: BCO is not doing it, however.

"Question: This is another division of Brunswick which does it?

"Answer: The International Division.

"Question: Can you tell me how many countries of the world Brunswick operates bowling

[1520]

centers in?

"Answer: I have never counted, but it operates in the U. K.,"——

The Court: United Kingdom.

"Answer: —United Kingdom, Germany, France, Italy, Peru, Israel, that's all, I guess.

"Question: Do you have any knowledge or precise recollection of the total number of bowling establishments operated by the International Division outside the United States?

"Answer: 24.

"Question: Does that include or exclude Canada?

"Answer: It excludes Canada.

"Question: And how many does the bowling operating division maintain in Canada?

"Answer: I don't know; it is part of the hundred sixty to seventy that I talked about.

"Question: Suggestion (c), if we may call it that, on this page, 'By '67 the division should be prepared to operate other retail establishments such as marinas, golf course,' and so forth. Has that been done?

"Answer: We have examined marinas in some detail, but decided not to do it.

[1521]

"Question: Golf courses?

"Answer: The same is true of golf courses.

"Question: Are other retail recreational establishments"——

Mr. Zucker: "Moving to Page 41, the middle of the page, and continuing with the Brunswick five-year plan, prepared in the middle of 1965:

The Court: I think you ought to finish that question, or else strike it, one or the other. You just read the first part of that question at the bottom of 38.

Mr. Hoffmann: May I, your Honor, read the question?

The Court: Yes.

Mr. Hoffmann: "Other retail recreational establishments being operated by Brunswick, that is to say, other than bowling centers?"

Mr. Agee: Unfortunately——

The Court: I didn't want to leave it suspended.

Where are we now, Mr. Zucker?

Mr. Zucker: Page 41.

The Court: All right.

Mr. Zucker: "Question: Mr. Hanigan, can you turn over the pages, please, and find

[1522]

under 'B-Plans for Meeting Objectives,' objective No. 3 continued, and then it is subheading little (d), bowling imagine building plans.

"Answer: 3(b)?

"Question: (d) as in David, little (d).

"Answer: Yes.

"Question: And you will notice there a small Roman numeral 4.

"Answer: Yes, sir.

"Question: The A-2 conversions in the better houses in certain geographical areas will aid in increasing revenues, enticing competition to try to convert also and thus assist the bowling division sales.

"Answer: Yes, sir.

"Question: In respect to this phrase, 'aid in increasing revenue,' does that refer to A-2 conversions in houses maintained by the Brunswick Bowling Operating Division?

"Answer: I can't answer that question. Inasmuch as this is the BCO five-year plan, I would expect it is.

"Question: Do you know whether in fact the better Brunswick houses did convert from A-1 to 2 during the operation of this five-year plan?

[1523]

"Answer: Some of them have, but only when they were able to put them in at the same price that anyone else would have had to pay and could prove that they would be able to increase revenues sufficiently to give us a sufficient payback on the investment."

Mr. Zucker: "Now shifting to Page 47 of the transcript Mr. Hoffmann asked the following:

"Question: Does the bowling center operated—Brunswick bowling center operated house pay cash when it has a conversion into A-2?

"Answer: No.

"Question: Does it actually pay anything at all—

"Answer: On the books of the company.

"Question: Are book entries made?

"Answer: Yes.

"Question: Is there an entry made for interest, or is it recorded as a simple transaction entry?

"Answer: No, the interest, if you want to call it that, the cost involved in this, is included in the justification of the investment."

Mr. Zucker: "Stop on Page 48 and go to

[1524]

Page 49:

"Question: Do you know what is meant by the phrase starting after the comma, 'enticing competition to try to convert also'?"

The Court: Try to convert. Read it again, please.

Mr. Zucker: "Question: Do you know what is meant by the phrase starting after the comma, 'enticing competition to try to convert also'?"

"Answer: Reading the thing, I would expect that if it would increase revenues for us, it is our belief it would increase revenues for others and, therefore, would be in the interest of building a better image for bowling.

"Financially, I imagine, in a financial sense—

"Question: Isn't it also a fair and natural reading of this sentence that it would entice competition to try to convert also, and thus assist the bowling division sales by means of increasing the bowling division's sales of A-2 equipment or conversions?

"Answer: Oh, yes.

"Question: Isn't that the fair meaning of it?

[1525]

The Court: Isn't that the fair meaning of it?

Mr. Zucker: The fair meaning of it.

Mr. Agee: "Answer: I would expect so."

Mr. Zucker: "Moving now to the top of Page 51 from Page 50:

"Question: Mr. Hanigan, still the same subparagraph, can you tell us in respect of the better Brunswick houses what is meant by the competition, who the competition to such houses are, who or what?

"Answer: Competing houses, of course.

"Question: And by competing houses, do you mean the houses operated by others than the Brunswick operating division?

"Answer: Not necessarily, no; each manager is competing with whoever is in his geographical area.

"Question: Do you know of any geographical areas in which there are two bowling centers, two or more bowling centers operated by the Brunswick bowling operating division?

"Answer: I don't know.

"Question: Were you talking, then, just of the possibility of——

[1526]

"Answer: Yes.

"Question: It means that if there were, they might be competitive?

"Answer: Yes, that's right."

Mr. Zucker: "Moving from the bottom of Page 51 to Page 55:

"Question: Now, where the conversion is from A-1 to A-2, it is a conversion of the equipment owned or operated by one of the Brunswick customers, isn"t that true, as night follows day?

"Answer: Yes, if the conversion is on the site, yes, sir.

"Question: And those customers might well be the competitors of the Brunswick operated bowling centers which have A-2 equipment?

"Answer: Could be.

"Question: And then in enticing competition to try to convert, would it be reasonable to suppose that the author or authors of Roman 4 meant that by conversion or installation of A-2 equipment in Brunswick operated houses, they would create a competitive situation which would have the effect of enticing, that is independent proprietors, for example, to try to convert?

[1527]

"Answer: That's reasonable.

"Question: Indeed, the A-1 is a faster or more desirable—the A-2 is a more desirable and faster piece of equipment than the A-1?

"Answer: It is faster, but not necessarily more desirable.

[1528]

"Question: And when you say the latter, are you considering such variables of judgment as not necessarily more desirable because of the increased cost or fixed cost to the purchaser resulting from the conversion?

"Answer: I am considering that and other factors.

"Question: What would be some of the others?

"Answer: The way the house is run, and, therefore, how full it is, whether the proprietor would be able to take advantage of the increased speed by, in essence, runing more bowlers through his machine.

"Question: Otherwise stated, if there were insufficient bowling traffic—

"Answer: The A-2 might not be—

"Question: —the conversion might be unnecessary?

"Answer: It might not be to his advantage. On the other hand, it might attract more people to his house by being faster.

"Question: Now, from your knowledge, could you tell us that even on the assumption that the variables level off and it is to the customer's advantage to make the conversion, whether or not there are

[1529]

competitors of Brunswick operated houses who would be financially unable to convert from A-1 to A-2?

"Answer: I can't tell you that.

"Question: Who in the organization would be able to say?

"Answer: I don't think anybody can tell you that.

"Question: Well, if we knew the price of conversion, if we knew the number of lanes or number of pinsetting machines to be converted and we knew something about the capital position and cash flow of the customer, would you not be in a position to say?

"Answer: There are many competitors about which we don't have that information.

"Question: But there might some to which Brunswick does?

"Answer: Possibly.

"Question: And wouldn't that be particularly true if the customer had been in financial difficulties with respect to paying debts owed to Brunswick?"

The Court: Read that question over again.

"Question: And wouldn't that be particularly

[1530]

true if the customer had been in financial difficulties with respect to paying debts owed to Brunswick?

"Answer: We would have the information in some instances such as this; not in others."

Mr. Zucker: The afternoon session of the deposition has now commenced, and Mr. Hoffmann continues his examination of this particular witness on the Brunswick five-year plan prepared during the middle of 1965 for the five years of 1966 through 1970, and Mr. Hanigan is referred to subparagraph under the caption of "B-Plans for Meeting Objectives," and Mr. Hanigan replies that he has read that paragraph and Mr. Hoffmann asks:

"Question: Mr. Hanigan, I address your attention to the last paragraph, the last sentence of that paragraph, 'Consideration will be given to locating such new centers as interceptors to outlying competitively equipped bowling establishments where such an installation would prove profitable to Brunswick.'

"By 'competitively equipped bowling establishments' can we suppose the write means AMF establishments?

"Answer: I would think that it would be a

[1531]

good supposition."

Mr. Zucker: Moving now to Mr. Hoffmann's question on page 63 of the transcript, near the bottom of the page:

"Question: Now, there is the statement that consideration will be given to locating such new centers as interceptors. Can you tell me what the word 'interceptor' means in this context?

"Answer: I don't know. I would suppose it would be bearing your competitor to the punch by having a place there before he can put one there.

"Question: Now, the locating of such new centers as interceptors in order to beat A. M. F. to the punch, does this have anything to do with the salvaging of bowling centers?

"Answer: Not bowling centers, but bowling equipment.

"Question: And when reference is made to locating such new centers, is that a reference to equipment only?

"Answer: It is a reference to locating a center that will enable us to salvage equipment which has been repossessed and removed to a warehouse.

"Question: I address your attention to the

[1532]

sentence which comes before the sentence starting 'This effectively will put us in a position . . .'.

'In those cases where such an analysis—' this is after looking at the potential market for new installations—'indicates favorable market conditions, good site availability and limited competition and where private capital is not readily available to make the necessary investment, we will take the necessary steps to secure the property for the building of a Brunswick operated center.' Was that sentence approved by the group which approves five-year plans?

"Answer: In the sense that it was in this plan, yes.

"Question: And does that—is that declarative of a purpose or program which is being carried out by Brunswick?

"Answer: It has not been so far.

"Question: And how about the future, is such a plan in anticipation?

"Answer: If it will be profitable for us, we certainly will carry it out.

"Question: And if you carry it out, will that in some way be done in aid of salvaging debt ridden independent bowling operated centers who

[1533]

otherwise might fold up their business?

"Answer: I didn't understand the question."

Mr. Zucker: The question was read back by the reporter and the witness said:

"The Witness: It will be done in aid of salvaging debt ridden corporations which otherwise have equipment which is of no use to anybody but in the warehouse.

"Question: And that corporation is the Brunswick Corporation?

"Answer: The Brunswick Corporation.

"Question: The Brunswick Corporation.

"Answer: Yes.

"Question: I ask you to look, if you will, at the last sentence under that same general heading, and just before little (c), "Productivity.'

'In subsequent years, 1967 and after, an additional team of men will be assigned to develop new locations for BCO.'

"Has that been done?

"Answer: A team has been assigned.

"Question: And it has looked for the development of new locations for BCO?

"Answer: Yes.

"Question: And are the new locations which

[1534]

are being developed locations where there exists bowling centers run by independent proprietors?

"Answer: None are being developed.

"Question: Is the team of men functioning now in an effort to develop such new locations?

"Answer: Yes, sir.

"Question: And is the meaning of the answer to the previous question that the project hasn't reached that level of development?

"Answer: We haven't been able to find such a place that meets the criteria that are laid out here.

"Question: Does the search include suitable sites, real estate and the like where there does not now presently exist a bowling center operated by an independent proprietor?

"Answer: That is correct."

Mr. Zucker: At this point, your Honor, we had marked as an exhibit an exhibit that has previously been introduced into evidence. I believe it is the July or August, 1965, issue of the trade magazine "Bowling Proprietor" which reports Hanigan's presentation at San Juan at the B. P. A. A. convention in June of 1965 where Mr. Hanigan outlined his fourteen points which were referred to by Mr. Lieblich,

[1535]

and at the top of page 68 Mr. Hoffmann states, as follows, to Mr. Hanigan:

"Question: I address your attention to underneath the legend in small type, the statement 'Probably no single presentation during B. P. A. A.'s 33rd annual convention so thoroughly captured the interest of all B. P. A. A. members as the speech delivered by John L. Hanigan, president of Brunswick Corporation before an open session on June 24.'

"And then in addition to that, I ask you to look at the very bottom of the page, there seems to be a reference to the Bowling Proprietor. Are you familiar with a journal or magazine of some sort or record called the Bowling Proprietor?"

"Answer: I have seen it."

Mr. Zucker: Shifting now to page 70—

Mr. Dwyer: Can we have that reference to where you are going?

The Court: Page 70.

Mr. Zucker: First I would like to state for the record that references to the first five-year plan of Brunswick have been marked in this action as Plaintiffs' 60 for identification and the article in Bowling Proprietor Magazine of

[1536]

July-August 1965 have been marked as Plaintiffs' 104 for identification. At transcript page 70 Mr. Hoffmann asked the following question with respect to this magazine article which reports in Mr. Hanigan's presentation in San Juan in June of 1965 of Brunswick's so-called fourteen points.

"Question: If you will be kind enough to glance at the first column on the first page, I specifically address you to this: 'The first thing is our new policies. These consist of four different but related points. In the first place we have set up for our bowling equipment firm prices.'

"Did you say this matter which is attributed to you?

"Answer: Yes, sir.

"Question: Can you tell us what you meant by the phrase 'firm prices?'

"Answer: Well, by hearsay, at least, before I came with the Brunswick Corporation, it had been the practice to negotiate each installation on the basis of

competitive competition with AMF to get an order and for this reason prices on at least some of the equipment sometimes deteriorated in a sort of a bid situation. We at this time took the stand that we were going to set firm prices for

[1537]

both new and used equipment. This had been particularly true in the used field; and subsequently did so.

"Question: Now, you make reference to 'firm conditions of sale,' and you say 'These three policies, gentlemen, are to make sure that nobody in the bowling business gets from Brunswick a better deal than anyone else gets.'

"Is that a correct statement of your sentiment that was expressed at the time?

"Answer: Yes, sir.

"Question: Does that mean that interest rates and conditions of installment purchase in contrast between Brunswick and its customers were not open to the bargaining process?

"Answer: That's correct.

"Question: And did that policy also go in effect in December of '65?

"Answer: '64.

"Question: '64, I beg your pardon.

"Am I to understand from the matter quoted starting at the bottom of that second column, 'The reason that I say that these decisions and policies are

sound is because they are for the good of the whole industry. . . . and, therefore, they are good

[1538]

for us too.', that those two sentences there, Brunswick sets policies as to terms and conditions of sale and as to prices with its primary consideration 'for the good of the whole industry?'

"Answer: Yes, sir.

"Question: And only subsidiarily the good of Brunswick, too?

"Answer: I think the two are intertwined.

"Question: You think they are intertwined?

"Answer: Yes.

"Question: And you do not give primacy to one or the other in conducting the affairs of Brunswick?

"Answer: In conducting the affairs of Brunswick, I want our company, of course, to prosper, and I think for it to prosper, at this time, particularly with the amount of money that the proprietors owed us, that it was necessary for them to prosper as well; so I say they are very much intertwined.

"Question: And for them to prosper, would it have been necessary for them to carry on in the business and see if they could create a positive cash flow, was that a prerequisite to the independent

[1539]

proprietors prospering?

"Answer: Yes, indeed.

"Question: Did there not come a time when the Brunswick operating—bowling operating division was created for the purpose of Brunswick going into the bowling operating business?

"Answer: The reason for establishing a bowling operating division was to salvage businesses which could be salvaged with proper operation and attention to the business, and in our opinion many places that were repossessed were closed down because they were not viable, in our opinion; others, and very many of them, were repossessed and sold to new proprietors.

"Question: When you say—I didn't mean to interrupt you.

"Answer: They were not all operated by the bowling operating center division."

Mr. Zucker: Your Honor, turning to page 76, Mr. Hoffmann refers Mr. Hanigan to a portion of this report on his fourteen points.

"Question: Addressing yourself to the paragraph starting 'we have . . .' —the paragraph containing 'We have decided in these cases,' and so forth, can you tell us what guides there are for

[1540]

the right answer is repossession?'

"Answer: This refers back to the point where we have extended him as far as we can, and he still can't pay us or won't, then you have two alternatives. One is to let him go on not paying, and the other is to repossess the equipment and in that situation of being faced with not collecting anything or letting him op-

erate for free, we think the right answer is to repossess.

"Question: Now, if you will be good enough to read on, or skip, if you would like, to the bottom of the second paragraph, on the second column—this may be not visually so accurate as the paragraph beginning 'When we are in trouble and a proprietor is in trouble we have four choices,' and so on, would you be good enough to read those choices, running on to the top of the next column.

"Answer: Yes.

"Question: When you say '. . . we can operate it and rehabilitate the business and sell it as a good business,' does this express a policy that Brunswick in the event it rehabilitates a business will sell it?

"Answer: Yes, sir.

"Question: And that is the Brunswick policy,

[1541]

is that correct?

"Answer: Yes, sir.

"Question: And was at the time when you made these remarks?

"Answer: Yes, sir.

"Question: Now, what if you operate a bowling center and you fail to rehabilitate it in the sense of making it into a good business to sell, is there any Brunswick policy as to how long this shall be carried as a bad business?

"Answer: Well, that depends on the definition of 'bad business.'

"Question: One in which there is what Mr. Rudo referred to as a 'negative cash flow?'

"Answer: We carry it as long as we are convinced that we will be able to convert it into a positive cash flow and eventually a profitable venture on a P&L basis. The moment we become convinced that this is not possible, we would shut it down.

"Question: And does it sometimes take a number of years to reach a conviction about that, one way or the other?

"Answer: Yes, sir.

"Question: And could that be as many as four,

[1542]

five, six years?

"Answer: Oh, I think not.

"Question: What would you think would be the outer reach of the time in which such a decision might be made?

"Answer: I would say two years, in the case of a negative cash flow."

Mr. Zucker: At this point Mr. Hoffmann refers Mr. Hanigan to exhibits which are essentially worksheets Mr. Lieblich prepared analyzing the operations of Dutchess Lanes again in the Poughkeepsie area for the years 1965 through 1967. At this point Mr. Hoffmann states as follows, at the bottom of page 79—incidentally, these worksheets have been marked as Plaintiffs' 53 for identification.

"Question: Making plain, first, that it was prepared by our office off sheets of information supplied by you to us.

"Do you have any knowledge of the history of that Dutchess Lanes in Poughkeepsie?

"Answer: Yes.

"Question: Do you have any reason to feel that during the reporting here, which indicates a loss in parenthesis, is inaccurate?"

[1543]

Mr. Hoffmann: "I have no way of judging that," is the answer.

The Court: The question was at the bottom of page 79, "Do you have any reason to feel that during the reporting here, which indicates a loss in parenthesis, is inaccurate?"

The answer is, "I have no way of judging it."

Mr. Zucker: "Question: Mr. Hanigan, premising those figures in parenthesis are accurate, is it consistent with the policy of Brunswick that Dutchess should be maintained this period of time with a negative cash flow?

"Answer: Could be, if we are convinced still that we can bring it through.

"Question: Do you have any knowledge one way or the other about such conviction in respect of Dutchess Lanes?

"Answer: I do not.

"Question: Do you have any knowledge of how many bowling centers now in operation by Brunswick are centers which show cash loss?

"Answer: No, sir.

"Question: If I suggested to you that as of the year 1967 there were eighty-six such centers, would you be shocked, surprised, or in any way upset

[1544]

by me suggestion?

"Answer: Not particularly.

"Question: Do you distinguish in your mind in terms of maintenance of the salvage operation between companies showing cash loss and companies showing a net loss?

"Answer: I do distinguish, yes.

"Question: Which would you regard as being in the poorer position?

"Answer: The one showing the cash loss, of course.

"Question: Do you have any idea of how many companies——

"Answer: You are talking about companies or operations, now?

"Question: I beg your pardon?

"Answer: You are talking about houses or companies?

"Question: I am talking about houses or centers, bowling centers operated——

"Answer: There is a distinction in some cases.

"Question: Yes, but it is not a distinction, I say, controlling now.

"Do you know how many bowling centers operated

[1545]

by Brunswick as of 1967 were operated with a net loss?

"Answer: No, sir; I know the whole operation had a net loss, on a P&L basis.

"Question: If I suggested to you that one hundred twenty-one out of one hundred ninety-eight had a net loss, would this shock you, disturb you or seem out of line in any way?

"Answer: No, sir.

"Question: Is there any limitation by way of policy which Brunswick has imposed upon how long it will maintain a center as a salvage operation?

"Answer: We will maintain it as long as it has a positive cash flow and we are convinced that we can eventually make—rehabilitate it and put it in a profit position.

"Question: And if it has a negative cash flow, would you maintain it if you think you may eventually be able to rehabilitate it?

"Answer: Yes, sir.

"Question: And will you do that indefinitely?

"Answer: Not indefinitely, no.

"Question: My question goes to that situation. Is there any policy as to how far it will be carried with a negative cash flow?

[1546]

"Answer: No, sir, no policy.

"Question: Do you in the instances of Brunswick operated bowling centers that have a negative cash flow consider from time to time the advisability of the alternative of offering the center for sale or just plum stopping operation?

"Answer: Well, inasmuch as we have firm prices for equipment, it would be an exercise in futility to offer it for sale if it had a negative cash flow; consequently we would close them down.

"Question: Well, do you consider the alternative of closing down from time to time as against the maintenance of those centers which show a negative cash flow?

"Answer: Yes, sir.

"Question: Do you do that periodically?

"Answer: Yes, sir.

"Question: Is that done by way of an exercise or corporate policy that——

"Answer: No, sir; it is done by the division.

"Question: Is it done by the division in terms of considerations of depletion of capital?

"Answer: It is done by the division, normally, at the end of a bowling season, because these places very often will have positive cash flow

[1547]

through the season; and if the division becomes convinced that they will never be able to rehabilitate the house, they close it down. If they are convinced they can salvage it, they continue to operate it.

"Question: Does a situation arise in which the division is convinced that a center can be rehabilitated but the negative cash flow is such and the period of time in which the negative cash flow has been experienced is such that it would seem to management to be too costly to rehabilitate it, has that situation arisen?

"Answer: I presume it has within the division; I have no knowledge of it.

"Question: It hasn't been called to your attention?

"Answer: No, and would not be.

"Question: Are these appraisals as to continuances made at the end of bowling seasons, did I understand you to say?

"Answer: Normally they would be."

• • •

[1548]

AFTERNOON SESSION.

The Court: If I understood you correctly before the recess, you are suspending your reading of the deposition of Mr. Hanigan to put a live witness on, right?

Mr. Hoffmann: Yes, indeed, your Honor.

The Court: Bring in the jury, please.

(The jury entered the courtroom.)

The Court: All right.

RUBEN A. DANKOFF, called as a witness on behalf of the Plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Dankoff, where do you reside?

A. In Tenafly, New Jersey.

Q. And where is your place of business?

A. I operate a chain of bowling centers, so I have a number of places of business.

Q. Where is your principal office?

A. In Tenafly, New Jersey.

Q. And you say you operate a chain of bowling centers. Under what name is that operated?

[1549]

A. General Bowling Corporation.

Q. What is your relationship to the General Bowling Corporation?

A. I am president, chief executive officer.

Q. And do the ten centers of the General Bowling Corporation—are they separately operated by different

corporations; the different centers owned by General Bowling Corporation, are they separately operated, under the names of separate corporations?

A. The bowling centers are not, but there are certain subsidiary operations within the centers, sometimes where there is a licensed lounge, or something, that may be operated as a wholly-owned subsidiary.

Q. Where are these centers located?

A. Three of them in Pennsylvania, three of them in Virginia, and two of them in Long Island, with a third in Long Island, which is not part of the chain.

Q. Are you familiar with the plaintiff corporation, Treadway; do you know Treadway?

A. Is that the same one that was once National Bowl-O-Mat?

Q. Indeed, yes.

A. Yes, I am.

Q. Does your company have any business or financial relationship with Treadway, or its predecessor

[1550]

companies?

A. No, sir.

Q. Do you personally, Mr. Dankoff, have any financial interest in any of the plaintiff corporations?

A. No, sir.

Q. Do you have any credit or debit arrangements with Mr. Lieblich, or any of the officials of the plaintiff corporations?

A. No, sir.

Q. Would you be good enough to sketch for us briefly your background, where you were brought up, educated and that sort of thing?

A. I was born and brought up in Rochester, New York. I went to college there. I went to law school.

I was graduated in 1935. I practiced law for about 20, 25 years, before I became tired of it and went into the bowling business and built a chain of bowling centers.

Q. In what year did you go into the bowling business?

A. 1956—I'm sorry. I went into it in 1955, but I started getting a chain in '56.

Q. Are you a member of the Bar, still?

A. I am a member of the New York State Bar, yes.

Q. Tell us please, about the corporation you mentioned earlier, the General Bowling Corporation,

[1551]

which has operated bowling centers, when was it organized?

A. I believe it came about by—organized in 1960 or '61. It was before I had anything to do with the company.

Q. And when did you first have something to do with the company?

[1552]

A. In 1964 I had built and was connected with another chain of bowling centers for a number of years before I had anything to do with General Bowling Corporation.

Q. What was that other chain, what was it called?

A. That was called Bowling Corporation of America.

Q. And did Bowling Corporation of America operate bowling centers?

A. Yes.

Q. How many?

A. About 16, about 16 at its peak.

Q. Did there come a time when you terminated your association with Bowling Corporation of America?

A. Yes, that was in 1964.

Q. And you have been with General Bowling Corporation ever since?

A. General, since 1964, yes.

Q. Now, sir, can you tell us whether in connection with General Bowling Corporation if you have been the active managerial official with responsibility for the operation of the different centers in the chain?

A. Yes, I have been the overall executive officer in charge of the operation of the bowling centers.

[1553]

Q. Now, have you, Mr. Dankoff, also been active in bowling proprietors affairs; I mean by that, in some other way than through the operation of your centers?

A. Yes, I have been very active in local, state and national associations of bowling operators and proprietors.

Q. Will you list for us what your associations are in this field?

A. Well, there are—they are all basically derived from the fact that we are members in local associations. For example, in Nassau County and Suffolk County on Long Island, the Alleghany County in the Pittsburgh area, and in the Fairfax County in suburbs of Washington, that's in the State of Virginia, and in Chesterfield County, Richmond, Virginia, through those local associations we are a member of the state associations of Virginia, Pennsylvania and New York, and through the State associations a member of the Bowling Proprietors Association of America, which is a national association.

Q. And were you a member of the Bowling Proprietors Association of America in 1965?

A. Yes, sir.

Q. Were you a member of any other associa-

[1554]

tion of bowling proprietors at that time?

A. In the three states that I mentioned, including the City of Washington.

Q. Can you name those local associations of which you were a member in 1965?

A. Yes. The Greater Pittsburgh Bowling Proprietors Association in Pittsburgh, Pennsylvania; the Washington Bowling Proprietors Association in Washington, D. C.; the Nassau County Bowling Proprietors Association in Long Island; and the Suffolk County Bowling Proprietors Association in Long Island, with the local ones.

[1555]

Q. Were you in 1965 a director or officer of any of these associations?

A. Would you repeat that?

Q. Did you hold office or were you a director in 1965 in any of the associations that you have named?

A. In 1965 I was a director of the Bowling Proprietors Association, elected by—from the State of Virginia.

Directors of the national association were elected from the various constituent states.

Q. Were you an officer or director of any of the other associations that you have named?

A. Yes. I have been officer and director of the Nassau Bowling Proprietors Association.

Q. Was that so in 1965?

A. To the best of my recollection, I was a director, not an officer, in that year, and the—I was a director of the Washington, D. C. association in 1965, I was committee chairman in—but not officer or director in other associations at that time.

Q. How big was your chain in 1964?

A. We had ten bowling centers at that time, and I had the eleventh, which was not part of the chain.

Q. How many centers does your chain have today?

A. The chain has eight.

Q. And is there still another center which you

[1556]

have an interest in which is outside of the chain?

A. Yes. That's in Valley Stream, Long Island.

Q. Now, Mr. Dankoff, did there come a time when you were made aware that Brunswick had begun to operate bowling centers through its bowling division?

A. Yes, sir.

Q. When was that?

A. In the month of December 1964, for the first time, other than rumor.

Q. How was this made known to you?

A. By the fact that Brunswick took over the operation of a bowling center which a couple of months before I had attempted to buy.

Q. What was the name of that center?

A. M-o-f-f-i-t-t Lanes in Brooklyn.

Q. You say that a couple of months before you had attempted to buy Moffitt Lanes?

A. Yes, sir.

Q. Can you tell us about that, please?

A. In October of 1964, having learned that the owners of Moffitt Lanes in Brooklyn, a 24-lane establishment, wanted to get out of the operating end of the business, I was put in contact with them, and after some negotiation, during which they gave me their financial statement and entire history of their operation, we arrived at an

[1557]

oral understanding of a deal whereby we would, our chain would take over Moffitt Lanes and its operation and remain as a tenant of the same—of the sellers.

The bowling center was located in a building in which they were also operating an oil business.

Q. Was that a center which had Brunswick bowling equipment in it?

A. Yes, sir. Only they were then heavily obligated to Brunswick for the balance of the purchase price of their equipment as well as in default of, I believe, one or two monthly payments, installments.

And in view of the fact that their agreement with Brunswick as an obligor of Brunswick required that if there is a change in obligors or someone taking over their obligation to pay Brunswick, it had to meet with Brunswick's approval, our understanding was not reduced to writing until I first wanted to have a talk with Brunswick representatives to make sure that we can satisfy Brunswick in that respect.

Q. Did you have such a talk?

A. I did.

Q. Where did it take place?

A. In Englewood Cliffs, New Jersey, where Brunswick then had its regional office.

Q. About when did it take place?

[1558]

A. To the best of my recollection, early in November 1964.

Q. Who was present in the course of your conversation?

A. Well, my conversation was with the person whom I thought, his name was Al Frecker, F-r-e-c-k-e-r, who was an officer of Brunswick and in charge of that, I believe it was called the Eastern Regional Office for the New Jersey-New York area.

Q. Now, would you tell us what your conversation with Mr. Frecker was?

A. Well, I advised Mr. Frecker that I had met with the principals of Moffitt Lanes, that we had arrived at a satisfactory, mutually satisfactory understanding for us to purchase their position in the operation of the bowling center, to take over his operation, and the Brunswick equipment in it, and—but before reducing it to writing I wanted to have the talk and tell them that it was our purpose to buy it, and I understood that they were a month or two delinquent in the monthly payments, that we were ready to pay that delinquency and cure it and bring it up to date, and to assume and agree to pay the entire balance of the obligation for the unpaid obligations for the Brunswick equipment.

And Mr. Frecker then stated to me what I had heard

[1559]

just about that time, that Brunswick had just recently changed its financing policies so as to require that people buying equipment or taking over obligations to Brunswick would have to make more substantial down payments then they had hitherto, and would have to make larger payments so as to increase their capital investment in the equipment.

And he said before Brunswick could accept us as an obligor, we would have to come within those new guidelines which Brunswick had adopted, just before that, some weeks before that, to my understanding.

And they were, of course, much stiffer than the terms of the agreement which they had with Moffitt Lanes, which had already been recast some months before I spoke with Mr. Frecker.

I then told Mr. Frecker that it would be impossible for us to be able to take over what had been a losing op-

eration and convert it to what I believed I could turn into a profitable operation unless we could continue with the same payment schedule as provided for between the owners of Moffitt Lanes and Brunswick, and we were, however, ready and willing and financially able to cure the delinquency immediately and to pay the balance over a period of years as provided in the existing obligation.

[1560]

He said no, they couldn't make an exception for us.

Q. Tell me—

A. So I then—

Q. I'm sorry, I didn't mean to interrupt you.

A. I then said to Mr. Frecker, "Well, supposing then that the corporation which is operating Moffitt Lanes, if I were able to arrange to buy stock of that corporation, instead of buying the equipment, and then you would have the same obligor, the same corporate obligor, merely different stockholders, and could we then continue with that corporation's obligations to you, as recast?"

And he said, "I would have to make inquiry about that and let you know what the policy is. It is the first time I have been faced with that question—and let you know."

And we left it that way. It was a very friendly meeting.

About three, four days, five days later, the principals of Moffitt Lanes contacted me and said they were no longer—

Mr. Seeley: I object to conversation.

The Witness: Yes, to conversation.

The Court: Wait a minute. Just a minute.

[1561]

I'm a lawyer, too. Please.

Read that part of the answer, please.

(Record read as follows:

"About three, four days, five days later, the principals of Moffitt Lanes contacted me and said they were no longer——")

The Court: Contacted me—period. The balance will be stricken.

As a result of that conversation, what happened?

A. (continuing) As a result of that conversation, we dropped all negotiations because they were no longer interested in selling.

The Court: All right. You might be getting in the back door what I wouldn't let in the front door, but I will permit it.

A. (continuing) And some weeks after that I learned that Brunswick had taken over the operation and was operating Moffitt Lanes, and they continued to operate it for some period of time before they eventually closed it up.

Q. Just a matter of weeks after you were unable to buy Moffitt Lanes, is that what you said?

A. That is correct.

Q. Brunswick took it over?

[1562]

A. Yes, sir.

Q. Tell me, sir, General Bowling Corporation, in December of 1964, was that corporation a solvent company?

A. Yes, sir.

Q. Operating a number of bowling centers—how many, again?

A. Ten.

Q. And was that the company that would have assumed the obligations to Brunswick of Moffitt Lanes?

A. Yes, sir.

The Court: Did I understand you to say that Brunswick closed it later?

The Witness: Yes, sir. I believe it was a year or a year and a half later they closed it.

By Mr. Hoffmann:

Q. Did you ever make any other unsuccessful attempts to purchase bowling centers?

A. Yes, sir.

Q. Any that involved the Brunswick Corporation in any way?

A. Yes, sir; in November of 1964, again the same—later in the same month that I had spoken to Mr. Frecker about the Moffitt Lanes acquisition, I was contacted by the owners or operators of a 48-lane bowling

[1563]

center in West Hempstead, Long Island, known as Royal Lanes. They said they understood that I was looking——

Mr. Seeley: I object.

The Witness: All right. I withdraw it. I'm sorry.

The Court: Never mind withdrawing it. It will be stricken. The jury will be instructed to ignore it. Try to remember that you are a witness.

The Witness: Yes, sir.

Mr. Hoffmann: Your Honor, I would like to find——

The Court: Go back and find the question. Perhaps not what was stricken, which I think was just a half a phrase.

He made a statement, "I withdraw it."

The Witness: I'm sorry.

The Court: All right. Repeat it.

(Record read as follows:

"In November of 1964, again the same—later in the same month that I had spoken to Mr. Frecker about the Moffitt Lanes acquisition, I was contacted by the owners or operators of a 48-lane bowling center in West Hempstead, Long Island, known as Royal Lanes. They said they understood

[1564]

that I was"—)

The Court: Sustained. No, no.

[1565]

A. (Continuing.) I entered into negotiations with them for the purchase of operation.

The Court: Royal Lanes.

The Witness: Royal Lanes; yes, sir.

The Court: All right.

A. (Continuing.) That was also what is known as a Brunswick house, because it was furnished with Brunswick equipment.

Q. How many lanes did you say?

A. 48.

Q. Where was it located?

A. West Hempstead, New York.

Q. And what happened then?

A. After securing their financial statements, and a record of their operation—they had been in operation only about two years at that time—we arrived at a complete understanding, financial understanding for a takeover, subject again to Brunswick's approval of ourselves as the new obligor.

There there was a much more substantial delinquency on the monthly payments. And, of course, since it was a larger bowling center, a much larger overall unpaid obligation for the equipment, almost $700,000.

And we agreed that I would go to Brunswick first, to find out if we would be accepted as an obligor in lieu

[1566]

of the existing one; and, if so, we would draw the contract to take over the equipment, the purchase price having already been agreed upon.

And so I called and made an appointment again with Al Frecker and met him at his office. At the same time, because—in the same conversation I spoke with him about two bowling centers, so I am going to the background of the second one—I had been in negotiation with the owner of a bowling center—I believe it was 32 or 36 lanes—in Elmont, Long Island, known as Elmont Bowlaire, where they had Brunswick pinspotters, or pinsetters, machines, but not Brunswick lanes.

And I discussed with them terms of a possible acquisition; came to no understanding with them at that time. But when I spoke to Mr. Frecker about the desire for the Royal acquisition, I also spoke with him about the possibility of our acquiring Elmont Bowlaire. And I wanted his reaction to our becoming the obligor for the pinsetters in Elmont and for all of the equipment in Royal Lanes.

Q. By obligor you mean a person who is going to pay, is that right?

A. Yes, the debtor is another word for it.

After the Elmont Bowlaire—he stated they had no objection whatever to our making any deal we wanted with

[1567]

the operators, because they were not interested in it as an operating location.

Q. By "they" you are talking about——

A. Brunswick. —and that if I could work out a satisfactory deal, Brunswick would accept us as an obligor on such a takeover.

However, as to Royal Lanes, he said, "You might as well forget about it. There is no possibility that we would accept you or anybody else as an obligor, or a debtor. That's a new place. It is a beautiful place. We are going to have our own operating chain of bowling centers and we want that place in it."

Q. When did he say this to you?

A. In November of 1964.

Q. That was prior to the association meeting in San Juan in June of 1965?

A. Yes, it was prior to a January '65 meeting, also, at which the subject was discussed.

I then said, "When was this decision made about Brunswick operating bowling centers as a chain?"

And he said, "This has been going through our minds for some time. This particular one we want to operate ourselves. And we will not accept you or anybody else as an obligor. There is no use of your even spending any time negotiating for it."

[1568]

I made this known—his conversation, the tenor of his conversation known to the principals with whom I had been negotiating, and we dropped all further negotiations.

They first said that they would speak with Brunswick about it. But we never were able to consummate the transaction that we had agreed upon verbally because we couldn't get Brunswick's approval.

However, Brunswick did not acquire that bowling center until about a year later.

The Court: Royal, you mean?

The Witness: Royal.

A. (Continuing.) A year later they finally made a deal with the operators and paid them some cash and took over the operation of Royal Lanes, and are still operating it, to the best of my knowledge.

The Court: What happened to Elmont?

The Witness: Elmont, I decided that the economics of the situation did not warrant our taking it over and we never entered into a contract to purchase it.

The Court: Nor did Brunswick?

The Witness: Brunswick eventually pulled its pinsetters—repossessed its pinsetters out of that place. And the owners of the building

[1569]

bought new pinspotters from AMF, the other manufacturer. And it is still in operation today, but not by Brunswick.

By Mr. Hoffmann:

Q. Did you hear, later on in San Juan, in '65, Mr. Hanigan deliver the 14 points of legal advice which Brunswick was going to follow; did you hear that?

A. Yes, I was present when he made the statement.

Q. And was one of these points which Mr. Hanigan made the point that Brunswick would repossess bowling equipment and centers, but that they would be made available for sale to independent proprietors?

A. Yes, Mr. Hanigan made that statement. But so did other Brunswick representatives, even before that.

Q. In your experience, in relation to that matter, does that indicate to you whether or not the statement was true or false?

Mr. Seeley: I object to that, your Honor.

The Court: I won't permit him to characterize it. You can ask what happened thereafter, if you want to.

Sustained.

Q. So far there were two occasions in which you tried to buy centers, is that right?

A. Yes, sir.

[1570]

Q. Unsuccessfully?

A. Yes, sir.

Q. Centers later acquired by Brunswick itself, isn't that right?

A. Yes, sir.

Q. Did you make any other effort to obtain bowling centers which proved unsuccessful?

A. Yes, sir.

Q. Tell us about that, did this involve Brunswick in some way?

A. Yes, sir.

Q. Please tell us about it?

A. I first want to correct a date. It's so many years that I need to refresh my recollection from notes.

The conversation with Mr. Frecker, with relation to Royal and Belmont, took place in March 1965, not in November of '64.

But in November of '64 there was another conversation with him relating to my negotiation for the purchase of another bowling center, called Roosevelt Lanes, in Roosevelt, Long Island. That was the one in November and I mixed up the two dates.

And there I came to a complete understanding with the operators of a Brunswick equipped bowling center—I don't remember how many lanes; It think it was 32——

[1571]

and on November 9, 1964, it was reduced to writing, in the form of a letter from me to one of the operators or owners of that bowling center. We came to a complete agreement on terms of acquisition, subject, however, to getting Brunswick's approval, because the owners of that bowling center, who were then also the owners of a 64-lane bowling center in Queens, known as Americana Lanes, were then involved in litigation with Brunswick over both of those bowling centers.

It seems that Brunswick had started to repossess the equipment in both of those bowling centers and on some legal technical basis their attorney was able to get an injunction against Brunswick—repossessing it. And while this was in the course of being litigated I entered into negotiations with them for the acquisition of the Roosevelt Lanes, subject to being able to work out the terms with Brunswick.

In November, 1964, within a few days after I wrote the letter to them, setting forth the terms of the understanding that was dated November 9, I had a meeting with Mr. Frecker, and told him that we had arrived at an agreement, and this might be a good opportunity for Brunswick to end the litigation respecting that bowling center, if he and I could agree upon the terms that Brunswick would accept for the payment of

[1572]

the Brunswick equipment in that bowling center, we would then take over and become the operators.

[1573]

And Mr. Frecker then said to me that, "Roosevelt Lanes is a very bad bowling center. It is one which should never have been opened as a bowling center in the first place.

"It has been a very badly losing operation. It has a lot of competition.

"We believe it was an error to have opened it in the first place. We have made commitments to customers of ours in the area that if and when we repossess the equipment we would close it up, we would not—it would not be resold and operated as a bowling center."

And he said, "Good faith on our part requires us to do just this, and therefore, under no circumstances would we sell to you or to anyone else. We don't think that the place should operate as a bowling center any longer, we don't think it has any future."

Mr. Frecker was not a man with whom one could bargain. He was strong in his opinions and strong in his statements, a man of very strong mind, and who made his point very incisively.

And so I accepted what he said, and reported the tenor of it to the principals, and that was the end of my attempt to acquire Roosevelt Lanes.

Nevertheless, shortly after the first of the year

[1574]

I learned that Brunswick had taken over both Roosevelt Lanes and Americana Lanes from these principals and was operating both of them, and Brunswick did operate Roosevelt Lanes for, I believe, a couple of years after that, and then closed it up and Brunswick still operates Americana Lanes in Queens.

Mr. Hoffmann: Your Honor, if I may have your consent, I'd like to simply read into the record at this time the profit and loss history of Roosevelt Lanes from the exhibit which is in evidence—

The Court: You secured this information from your adversary?

Mr. Hoffmann: From Brunswick.

The Court: Pursuant to discovery.

Mr. Hoffmann: Yes. Exhibit in evidence is Plaintiff's 47.

The Court: Roosevelt is number 265?

Mr. Hoffmann: 265.

The first line, your Honor, is, as you will recall the testimony, the line of the Brunswick operation, and that's all I will bother to read, the top line of the two lines.

The Court: Yes, I know.

Mr. Hoffmann: 1965, $537.

[1575]

Then in 1966, a loss figure of $42,334.
In 1967, a loss figure of $48,315.
In 1968, a loss figure of $36,549.
In 1969, a loss figure of $24,034.
And then beyond that, the exhibit does not speak concerning Roosevelt Lanes.

The witness also mentioned in testimony his attempt to buy Brunswick Royal at West Hempstead, Long Island.

The Court: What number?

Mr. Hoffmann: 311 on this exhibit.

The history in terms of profit and loss of that center is as follows:
1966, a loss of $22,806.
1967, a loss of $5,211.
1968, a loss of $16,902.
1969, a positive figure, the only one here, by the way, $905.
And then in 1970, a loss of $18,470.
In 1971, a loss of $7,973.
In 1972—I'm sorry, 1972, again a positive figure, $8,953.

And in the same exhibit there is a reference to the center, Moffitt, which the witness also testified about—

[1576]

The Court: What number?

Mr. Hoffmann: 217, your Honor. You will find it on the third—no, the fourth page.

The Court: I have it.

[1577]

Mr. Hoffmann: 1965, a loss of $17,135.
1966, a loss of $8,860.
1967, a loss of $60,914.
And then there are no further numbers after that.

Q. And now, Mr. Dankoff, were there any other situations in which you were confronted by Brunswick in an effort to buy or obtain in some way a bowling center?

A. Yes, there was one other attempt made by me as there were by quite a few other bowling proprietors in Long Island to purchase from Brunswick Sunset Lanes in Deer Park, Long Island, after they purchased it from Chris Vitolo who had purchased it in a bankruptcy sale of American International Bowling Corporation.

The Court: What part of Long Island?

The Witness: Deer Park, sir.

The Court: All right.

Q. Yes, sir, can you tell us about that?

A. Yes. I don't remember the name of the representative in the same New Jersey office, I can't be sure whether it was Frecker or the man in charge of the financial arrangements in that office, I no longer remember his name, but I went to see them about the possibility of—to find out whether Sunset Lanes could

[1578]

be purchased, and was advised that it was not for sale.

Some months after—that was, I believe it was in, I believe it was in 1966 when it happened, it may have been in the last part of 1965, I think it was the last part of 1965, and some weeks or months after that on the occasion of Milton Rudo and several other Brunswick representatives

being present at a Greater Pittsburgh Bowling Proprietors Association meeting in Pittsburgh where they spoke to the proprietors at one of their meetings, explaining Brunswick's philosophy in connection with its operating a chain of bowling centers, I specifically asked Mr. Milton Rudo, who was then the head of the bowling center operating division, whether Sunset Lanes could be purchased, and he said, no, none of the former AIBC bowling centers is for sale.

That was because during that talk he stated that all of the BCOD Brunswick—or bowling center operating division houses could be purchased, and when I asked him whether that one could be purchased, he said, "No, none of the former AIBC houses could be purchased."

So I no longer made any further attempt to buy Sunset Lanes.

Q. And Mr. Hanigan had said the same thing,

[1579]

had he not, in San Juan, Puerto Rico, at the meeting of the proprietors association?

A. Yes, sir. And Milton Rudo had told me that personally in January of 1965, too.

Mr. Hoffmann: Here, your Honor, if I may read from the exhibit again, we have a winner, Sunset Lanes.

The Court: You have a winner? Is that what you said?

Mr. Hoffmann: We have a winner here in Sunset Lanes. It is after a first year—-

The Court: You tell me the number.

Mr. Hoffmann: Number 108 on the first page of Exhibit 47.

After the first year, 1965, during which it was acquired and which shows a loss of $17,575, we have for 1966 a positive figure on this lane which was not for sale to Mr. Dankoff of $30,358.

And in 1967 a positive figure of $19,590.

And in 1968 a positive figure of $8,495.

And for 1969 a positive figure of $21,299.

For 1970, $37,737.

And for 1971, $69,822.

And finally, for 1972, a positive figure of $99,008.

[1580]

The Court: Is this the center that Vitolo bought at a bankruptcy sale?

The Witness: Yes, sir.

Q. Now, did you, when I say, "you," I mean the corporation, General Bowling, maintain any center which was in a competitive market with a BCOD or Brunswick Operated Center?

A. The only one that could be said to be in a competitive marketing area was one that we then and still do operate in West Babylon, Long Island, which is several miles distant from Sunset Lanes, the one we were just discussing, in Deer Park, Long Island.

Q. In operation of the center in West Babylon—by the way, what is that center called?

A. Babylon Bowl.

Q. In operation of Babylon Bowl, did you to your knowledge find the center confronted with Brunswick competitive tactics which you as a proprietor were unable to meet?

A. Yes.

• • •

[1583]

The Court: • • •

I hereby direct counsel to rephrase it, eliminating the word, "tactics." The other objection stated is overruled.

Q. Mr. Dankoff, in the operation of your center, did you find yourself confronted by the competitive acts of Brunswick which you yourself were unable to meet in operating your center?

A. Yes, sir.

Q. Tell us about that, please.

A. In 1965, that was about the third or fourth year of constant decline in the bowling business since it first began in 1961——

Q. You mean the decline began in 1961?

A. Decline—in the entire bowling industry, we just could not fill up our lanes, any kind of operators, and in Long Island it was particularly bad.

Everyone was hungry for league contracts. There

[1584]

was then this—this was in the Spring of 1965, there was then bowling in Viking Lanes, a bowling center located almost across the street from Sunset Lanes, six leagues, six large bowling leagues, all emanating from one industrial concern, Airborne Instruments Company.

These six leagues because of their power of negotiating and bargaining together for all of the six leagues then made it known that they were ready to transfer their league contracts for bowling from the 1965-'66 season, which would begin the following September, and began to look around for prices and what they called inducements or extras.

Their negotiating committee of their league officers came to us at Babylon Bowl and wanted to know what our price would be for the 65-66 season per lane or game, as it is known to the—to those not in the trade, and what inducements we would give them over and above price if they would come and bowl.

They were—they would have been very desirable acquisition for any bowling center in those days. They had—I believe they had one league which bowled in the daytime, entirely during dead hours for bowling centers, and another one which bowled at midnight, which is even more dead for bowling centers in those

[1585]

days.

The others bowled in evening hours or what we call prime time, between 6:30 and 11:30 in the evening.

We gave them our prices for the 1965-66 season, we had been charging 55 cents a line in the then existing season, 64-65.

We advised them that our price for the 65-66 season would be 60 cents a line, provided that we could have all six of their leagues, including the daytime one and the midnight one, the most desirable ones, and provided further that the inducements or extras which they were seeking would not be any greater than those which they were then receiving at Viking Lanes.

Those inducements or extras consist generally speaking in the trade of turkeys for the teams as something that they compete among themselves for at Thanksgiving time, bottles of liquor at Christmas time, free drinks at Christmas time, what they call banquets or an end of the season buffet, which is set up for them as an additional reward for their having bowled, and more and more and

more, this will be developed so you will understand what I mean——

[1586]

Mr. Seeley: He drops his voice. I heard "more and more and more."

(Record read.)

A. By the term "inducements or extras——"

The Court: What do you mean?

The Witness: Well, like, they made known to us what they were then getting from Viking, and we gave them the price of 60 cents a line if they would accept the same list of inducements that they were then getting from Viking Lanes.

Q. What was your regular price at that time?

A. Well, at that time the price of 55 cents, but we were contemplating an increase for the following September for the following league year.

Q. To what price?

A. To 60 cents.

They, after a period of negotiation, they told us to prepare the contracts, they said they were satisfied with that arrangement—I want to change that.

I believe we agreed that we would give them the bowling if we had all six leagues, including the daytime and midnight one, for 55 cents a line for all six leagues if the inducements were no greater than they were then getting from Viking, and they, despite the fact that we were contemplating increasing our price the

[1587]

following September to 60 cents, they told us to prepare the contracts, they were satisfied with that arrangement, and we proceeded to prepare the contracts.

Then they came around and said, "Well, we have been talking since we last talked with you to Sunset Lanes, and Brunswick——"

Q. That's the Brunswick?

A. "—and Brunswick is prepared to give us much more in the way of inducements and a better price."

And they told us what they were offered by Brunswick in addition to the 5 cents a lane, the inducements were such that upon analysis in my opinion they amounted to the equivalent of more than 40 per cent of the price they were going to pay for the lines bowling.

Under those circumstances I couldn't meet that competition and I told them, I am sorry to see them go, but I couldn't do it.

They went to several other bowling centers in the area and couldn't get what they wanted, what they said Brunswick offered, and eventually ended up bowling that next season at Brunswick.

The inducements which they got from Brunswick amounted to the equivalent of 21 to 22 cents a line, and this was by admission of Brunswick's own representatives at subsequent meetings where they were confronted with

[1588]

this state of facts by the committee of bowling proprietors of Nassau and Suffolk associations.

Q. When did the first such meetings take place?

A. In the spring of 1965.

Q. Where was it held?

A. It was held some place in Long Island. I wasn't there, but a committee representing me and the rest of us members met with them, and——

Mr. Seeley: May we have the name of at least one?

The Witness: Yes. The Brunswick representatives who were present there were Jack Thomas, Burnie Rudo, those two I remember clearly.

The rest of them at this moment escape me.

Harold Weiner, who was then the manager—the manager—no, I think he was the regional supervisor for Brunswick of that area, which included Sunset Lanes.

And they analyzed what these so-called extras or inducements were and came away from there and reported to us that it was agreed that they amounted to 22 cents—equivalent of 22 cents kickback or refund or inducement or extra per line.

In the meantime I had called Bernie Rudo, who was the director of operations then of all of

[1589]

the BCOD houses, he is a brother of Milton Rudo who was then the head of Brunswick's, head of all bowling operations, and who I knew personally many years.

And I discussed with him the fact did he know that these six leagues were being offered inducements which were the equivalent of 22 cents a line for each line for which they were going to get 40 cents.

And he said he was aware of it, and he said, "We are treating these leagues no better and no worse than we are treating any of the other leagues in our place."

I never got those leagues.

By Mr. Hoffmann:

Q. Do you have any recollection of any other competitive acts which presented the kind of competition you felt you couldn't meet at your center, competitive acts of Brunswick?

A. Well, while their River Bowl, I believe is the name of it, a bowling center which they operate in Maryland, near Bethesda, is not in the competitive market area with two of my bowling centers in Alexandria and Annandale, Virginia, they nevertheless approached two of my assistant managers in one of those bowling centers and attempted

[1590]

to hire them away from our operation at a very much larger scale of pay, and in view of the fact that Brunswick had in discussing its policies with bowling proprietors on many occasions said that they would never take away any of our bowling personnel or management personnel while developing their own personnel, I called the manager of River Bowl and took him to task about the fact that he was trying to hire away two of our assistant managers when we had been assured by the Brunswick representatives that they wouldn't do this.

And he called me back subsequently and apologized and said he would not negotiate with them any further.

But the harm was done. They had been offered much more money, and in order to keep them we had to in the area generally increase the scale which we were forced to pay to our managment personnel.

Well, there were other things done to—in connection by Brunswick in their contacting league secretaries—

Mr. Seeley: I object to the generality of that statement.

The Court: The whole expression will be stricken and the jury will be instructed to ignore it.

Ask the question, Mr. Hoffmann.

[1591]

Q. Mr. Dankoff, can you think of any other specific competitive act engaged in by Brunswick which you felt yourselves you were unable to deal with or meet?

A. Okay. Brunswick in the latter '60's—'66, '67, I believe—came out with a new pinsetter which they called A-2's, and since I never bought them I don't know exactly whether it was a total new pinsetter or a supplement to existing pinsetters, but it was called A-2, to speed up their operation, and Brunswick sent out written communications by someone—by one of their representatives who signed as crusade coordinator, contacting secretaries of leagues in many parts of the country, some secretaries in some of my leagues received some, and in which they suggested to—well, you have the letter there, it speaks for itself.

The substance of it was that they should exert pressure upon the bowlin proprietors where they were bowling to force them to buy A-2's from Brunswick.

Mr. Hoffmann: Would you hold it just a moment?

(Exhibit P-57 marked for identification.)

Mr. Hoffman: I have asked Miss Costello to mark as Plaintiff's 57 for identification a copy of a letter, W. B. Messler, Crusade Coordin-

[1592]

ator, Brunswick Corporation, addressed on stationery of Bowling Division, Brunswick Corporation, to "Dear Mr. Secretary," and two sheets that are attached thereto.

[1593]

Q. Mr. Dankoff, I show you what has been marked as Plaintiff's Exhibit 57 for identification and ask if you can tell us whether that is the communication to which you have just referred in your testimony?

A. Yes, sir. This particular one was not received by one of my league secretaries, but an exact duplicate of it was received by a number of them.

Q. Would you be good enough to look at 57?

A. Yes, sir.

Q. Wait a minute. Before you do that, you are quite clear that this is the same as the ones received by you, and seen by you before, passed on to you by—

A. Not received by me.

Q. Passed on by your league secretaries to you?

A. That's correct.

Mr. Hoffmann: I offer it in evidence, your Honor.

The Court: Any objection?

Mr. Seeley: No.

The Court: P-57.

(Exhibit P-57 received and marked in evidence.)

Q. Now, Mr. Dankoff, I ask you to look at Plaintiff's Exhibit 57 in evidence. Do you notice a date near the top right corner in handwriting?

A. Yes, sir.

[1594]

Q. The date is 3-21-68, is that right?

A. Yes, sir.

Q. Do you have any independent recollection, other than through the use of that date, as to when a letter of this type was received by the league secretaries and handed over to you?

A. To my best recollection, it was in 1966 and/or 1967.

Q. In other words, earlier than that date, earlier than the date that appears—

A. Yes. The date that is written on there is the date that I testified on deposition testimony at the last trial of this action.

Q. I see. Would you be good enough to look at the first page of this exhibit?

A. Yes, sir.

Q. Tell me, sir, did you have an A-2 equipment in your centers in '66 or '67 when you say this communication was received by you?

A. No, sir; I had no Brunswick equipment at all in our centers.

[1595]

Q. Did you have a comparable piece of equipment, made by some other manufacturer, to this fast A-2—to the fast model A-2; did you have a comparable piece of equipment in terms of the speed of the comeback of the ball?

A. No, I don't—we had equipment to set up pins, the same as Brunswick had, only they were made by AMF. But they were not capable of producing the speed of the A-2's, that I know.

Q. Now, this is referred to as a crusade, is it not, "Is your bowling league a 'late late-league?' Do your bowlers threaten to show up in their pajamas, as in the attached ad reprint?"

It never happened to you, did it, that your bowlers threatened to show up in their pajamas?

> "Are you tired of listening to bowlers complain about late starts regardless of what time you bowl?
>
> "Mr. Secretary, if you answer Yes you are qualified to join the Brunswick Bowlers' Crusade to stamp out late starts."

Now, if you look on, what this crusade wants to do is:

"The Crusade to stamp out late starts wants to convert all Brunswick Model A Pinsetters to Brunswick Model A-2's—and thereby, increase

[1596]

the fun and enjoyment of bowling. If you have bowled the A-2 way, you know what we mean. The A-2 is the fastest pinsetter in the West (North, South and East). A-2 can save up to 17 minutes per league night and means on time starts—on-time finishes while providing the best possible bowling.

> "Mr. Secretary, you needn't face another season of aggravated bowlers. Fill out and mail the enclosed application today."

And you notice it says there, "I volunteer! Enlist me in the crusade to stamp out late starts.

"We'll send a supply of the official C. T. S. O. L. S."—I take it, without knowing—perhaps I should ask the witness—that C. T. S. O. L. S. means the Crusade to stamp out late starts—"We'll send a supply of the official badges (like the one attached)"—unfortunately, there is no such badge attached—"so you can crusade where you bowl. Act now. Our supply is limited. And when you receive your supply of badges, instruct your lieutenants to wear them, with honor. Ultimately, every Brunswick-equipped center should have A-2's . . . why not be a leader?"

Now, who is the address of this, Mr. Dankoff?

[1597]

A. League secretaries.

Q. These are secretaries of leagues which can make contracts with bowling centers, and choose them as they please, is that right?

A. In most instances, not in every instance. Some leagues require a president to negotiate with the secretary. But, generally speaking, league secretaries are the most powerful representative for their leagues and make contracts for them.

• • •

[1600]

By Mr. Hoffmann:

Q. We were, I think, on the pajama page just before the recess.

Now, Mr. Dankoff, have you had occasion to see any BCOD operated centers while they were in the hands of BCOD management?

A. Yes, I have seen quite a few of them since 1965.

[1601]

Q. And tell me about this one observation, if you can; in the centers you have seen were you able to make a judgment, from what you saw, as to whether or not the pinsetting equipment was repossessed—their equipment?

A. No, I would have no way of judging that. The pinsetters themselves are not available to public view. So I would have no way of judging. But I know that some of them were repossessed bowling centers that I was in, of course.

Q. And as to those repossessed centers, did you notice any modern Brunswick equipment?

A. Yes, pretty generally, when Brunswick took them over, shortly thereafter they began programs of modernization, or dressing them up with most modern equipment, that the public would see.

Q. Did you see any A-2 machines in these centers?

A. Yes, sir; they usually labelled those by having the letters "A-2" on some of the equipment.

Q. Do you have any idea of when the A-2 machine was first generally offered to the trade, to the bowling proprietors?

A. I would have to guess. I couldn't be precise. It was in the middle '60's, but I don't remember the exact year, because I didn't purchase them.

[1602]

Q. You spoke before of the problem of holding on to your managerial employees. I address your attention, if I may, to Plaintiff's Exhibit 28 in evidence. Would you be good enough to look at page 15? You notice the second paragraph from the bottom on page 15, "It is also BCO policy not to hire management personnel away from other bowling centers but to recruit and train new people."

Does that jibe with your experience, sir?

A. Exactly contrary to my experience, as I previously testified.

[1603]

Q. Now, Mr. Dankoff, your centers use AMF equipment; is that your testimony?

A. It is not exactly true. The first bowling chain that I operated, Bowling Corporation of America, we did have out of the 16, I believe we had three or four bowling centers that had Brunswick equipment, but the present chain, General Bowling Corporation, has only AMF-manufactured equipment.

Mr. Hoffmann: Excuse me, your Honor, just one second.

The Witness: I would also have to quarrel with that last statement, Mr. Hoffmann, in this respect: Even though the bowling equipment in the present chain is all manufactured by AMF, we do have bil-

liard tables in many of them which were manufactured by Brunswick, and which we purchased from Brunswick.

Q. Do you have any knowledge of AMF repossessing its bowling equipment such as pinsetters?

• • •

[1611]

Q. You testified, Mr. Dankoff, before the weekend recess, concerning competitive acts of Brunswick that your center experienced?

A. Yes.

Q. Are there any others which you know of which failed to testify to this far?

A. Well, one which I found particularly effective competition against existing bowling proprietors was Brunswick's habit after repossession and taking over a bowling center and putting it in its bowling operating division, of going through what they would call a modernization program.

• • •

[1615]

Q. Mr. Dankoff, can you think of any other examples of competitive conduct by Brunswick which you, as a proprietor of bowling centers, were unable to meet?

A. We were unable to meet the kind of inducements and "giveaways" which I already attested to the last time. And from my own personal experience we were unable to meet the very low prices and rewards offered to people

[1616]

who would come in and bowl in those bowling centers.

The Court: Did you say "prices" or "prizes"?

The Witness: Prices.

The Court: Prices.

The Witness: As well as prizes, your Honor. Both were offered.

• • •

[1629]

Q. Mr. Dankoff, did you attend a meeting of the Bowling Proprietors Association of America taking place in San Juan in June 1965?

A. Yes.

Q. Now, sir, please listen to my question carefully: Without making any reference to the words used, but simply giving us as a lawyer might, simply the sense of it, was there any resolution introduced at that meeting concerning the Brunswick—the matter of Brunswick operating bowling centers?

A. Yes.

Q. Were you the author of that resolution?

A. Yes.

Q. And please most carefully be mindful of the wording in my question.

What was the sense of the resolution?

A. The resolution—the sense of it expressed the grave concern of all of us as bowling proprietors about a manufacturer-creditor of the bowling industry going into the business of operating bowling centers in competition with us.

Q. Was that resolution passed at this meeting?

[1630]

A. Unanimously.

Q. About how many people were there, would you say?

A. Over 400 members.

Q. Was there any other meeting that you attended of bowling proprietors' associations during that year 1965?

A. Yes, many.

Q. Can you tell us whether or not the subject matter you have described as being part of the resolution in San Juan was considered by other bowling proprietor associations in meetings taking place in 1965?

A. Yes, sir.

Q. What associations?

A. The Nassau County Bowling Proprietors Association, of which I was a member; and the Suffolk County Bowling Proprietors, of which I was a member.

Q. Were there any resolutions of similar import offered at meetings of those associations?

A. Yes, virtually the same import as I described for the San Juan one, and they were adopted by both associations.

Q. Now, then, in 1966 do you recall that you attended any meetings of bowling proprietors' associations at which the same or similar matters were discussed?

[1631]

A. Yes, in those years they were discussed at every bowling proprietors association meeting that I attended anywhere, whether it was Pittsburgh or Washington or——

Q. Did you attend meetings in 1966?

A. Yes.

Q. Where were they?

A. I attended meetings in Virginia and in Washington and in Pittsburgh and in Long Island, and in the 1966 meeting of members of the Bowling Proprietors Association which took place in June of 1966 in San Diego, California, prior to that there was a Board of Directors meeting of the Bowling Proprietors Association of America which

took place in January of 1966 at the Jack Tar Hotel in Lansing, Michigan, where the same matter was discussed in great detail and resolutions offered.

Q. Do you have any recollection of about how many bowling centers had been acquired by BCOD at the time of the Lansing meeting in January 1966?

A. Yes. They were up over 60 at that time.

Mr. Hoffmann: Your Honor, I don't have——

The Court: What are you looking for?

Mr. Hoffmann: I have something, your Honor, which has not yet been offered—it's been previously marked—I'd like to have it marked for the purpose of jogging the witness' recollec-

[1632]

tion as to the Lansing meeting. I would certainly want to show it to you.

The Court: Maybe he doesn't need jogging.

Q. Mr. Dankoff, are you quite confident about the number of centers acquired as of January 1966?

A. Well, I gave my best recollection.

Q. Do you have a real recollection of what it was as of that moment in history?

Mr. Seeley: I will stipulate, counsel, it was 124 at the year ended 1965.

Mr. Hoffmann: Well, your Honor, I trust the proffer of the stipulation will make this document relevant.

May I have this marked, please?

(Exhibit P-58 marked for identification.)

The Court: What is it, resolution passed in Lansing, Michigan?

Mr. Hoffmann: Well, it is a report of a meeting which has been described already by the witness, but I think I should ask him a few more questions before offering the document.

The Court: You intend to offer this into evidence?

Mr. Hoffmann: Yes, if I properly identify it, your Honor.

[1633]

Q. Mr. Dankoff, I show you what's been marked as Plaintiff's 58 for identification.

A. Yes.

Q. I ask you if you have seen this or its counterpart before?

A. Yes, I produced it at an earlier date from my records.

Q. What is it, sir?

A. It is my minutes of a meeting of the chain organizations which was held in Lansing, Michigan, in January 1966. I was chairman of that committee and I took my own notes and I drew my own minutes of what occurred at that meeting.

That was a committee of the Bowling Proprietors Association of America.

Mr. Hoffmann: Your Honor, I now offer P-58 into evidence.

Mr. Seeley: I have not seen it, your Honor.

The Court: You will before I rule on it.
Show it to Mr. Seeley.

Mr. Hoffmann: Certainly.

Mr. Seeley: I object to it, your Honor.

In the first place, there is a statement in here about the number of centers operated by Brunswick. It doesn't emanate from Brunswick.

[1634]

Obviously, it is hearsay.

It doesn't say who says that was the number.

The Court: Didn't you stipulate——

Mr. Seeley: I stipulated 124 at the year ending 1965. That's domestic, excluding other countries.

The Court: Did I understand you to say that you prepared these minutes?

The Witness: Yes, I did, sir.

The Court: Cross-examine him as to the authenticity of same with regard to his knowledge with particular reference, but not limited, to the 200 bowling centers or anything else you want to interrogate him on as far as that paper is concerned.

Mr. Seeley: I only want to question him about that particular——

The Court: Proceed.

EXAMINATION ON VOIR DIRE

By Mr. Seeley:

Q. What was the source, Mr. Dankoff, of the statement which you recorded in your minutes about Brunswick's operating approximately 200 bowling centers ?

A. May I see it, please?

The source was the conversation which took place

[1635]

in the chain committee meeting, Mr. Seeley.

Mr. Seeley: Then I object to it as hearsay, and I further object to the entire document, your Honor, as being conclusory, as being clearly hearsay, a report of what some people said who were gathered together apparently without anyone from Brunswick being in attendance.

And on the standing grounds that this line of inquiry is irrelevant anyway.

Mr. Hoffmann: If your Honor please, as to the 200 centers, I am content to have the document admitted in evidence with the qualification that it is not being offered for the proof of the matter asserted that there were 200 centers existing as of January 1966.

In all other respects I submit the report is perfectly competent, it is a report of what happened at a meeting which took place in Lansing, Michigan, at that time, and its general relevancy to the issues here, the same relevancy about which we debated at the side bar.

The Court: Supposing we change that bowling center number to 124; any objection to that?

Mr. Hoffmann: I won't stipulate to that.

[1636]

I think it was larged than that.

Mr. Seeley: Plaintiff has an exhibit which shows——

The Court: P-59.

Mr. McNeill: 49, if your Honor please.

Mr. Hoffmann: Your Honor, I will be prepared to stipulate it, but in doing so what I am trying to say is when you have a number given on P-49,

or indeed on the one on Exhibit, I think it is, 15, those numbers are at a particular point in the year, at the end of the fiscal year, particularly in 1965, 1966, where a great number of centers were being acquired, it didn't speak to the number of centers acquired during the year. It simply spoke to the number which BCOD had as of that one day, at the time the books were closed at the end of the fiscal year.

The Court: Unless you agree that the bowling center number will be 124, I will not permit it into evidence because on cross-examination Mr. Dankoff admits that this was general conversation, actually it is hearsay, he heard it from some other members who were present, that they were operating with what, approximately 200 centers, somebody

[1637]

said that, or the substance of it?

The Witness: Yes.

Mr. Hoffmann: I will stipulate, your Honor.

The Court: 124 centers. Into evidence.

Mr. Hoffmann: As of that point in time.

The Court: Right. Over the objection of counsel for the defendant, P-58 into evidence.

(Exhibit P-58 received and marked in evidence.)

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

[1638]

The Court: When was that meeting, again?

The Witness: January 27, 1966, you Honor.

The Court: Lansing, Michigan, right?

The Witness: Yes, sir.

By Mr. Hoffmann:

Q. Do you have a copy of it in front of you, that P-58 in evidence?

A. I do.

Q. The discussion referred to in the third paragraph, where it says, "There was a long discussion about Brunswick's activities in its BCO division, in the extent of the competition of its approximately 200 bowling centers now in operation," did that discussion lead to any action or resolutions by this group?

A. I would say it led to the offering of a resolution a couple of days later at a regular board of directors meeting. But the resolution was offered by me and not by this group.

Q. And what was the burden or the meaning of that resolution that you offered? Again, please be mindful of the limitations I asked you to follow in my previous question relating to San Juan.

A. It alluded to the same matter of concern as the

[1639]

previous resolutions described here, with this difference. It asked that the officers and executive committee of the Bowling Proprietors Association be required to retain the best legal counsel available, expert in the appropriate field, to study the matter of the background, history and growth of Brunswick in the field of operating its own bowling centers, and its effect, competitively, upon the members of the association, and to advise the members accordingly.

That was the gist of it.

Q. Do you know of any other means where the subject of that resolution, or the subject of Brunswick's activities in its BCOD Division, in the extent of the competition of its bowling centers with the members of the association, was considered?

A. Yes, sir; a very important meeting where that was considered a matter of prime discussion was at the general membership and convention of the Bowling Proprietors Association of America.

Q. When did that take place?

A. In June of 1966 in San Diego, California.

Q. And was there any activity taken by the membership at that meeting in respect of this subject—in relation to the subject?

A. The membership took under consideration a resolu-

[1640]

tion which was offered—I believe by Mr. Lieblich—at that general membership meeting. But it did not pass, it failed by a few votes.

Q. And have you been in attendance at meetings of these associations you have described yourself as having membership in, since that time, that is to say, since the time of the San Diego meeting in '66, have you been in attendance at such meetings?

A. Yes, I have been in attendance at every directors' meeting and every general membership meeting since that time, up until the present time.

• • •

[1642]

Q. Was there any resolution or action taken at any of these later meetings in respect of that subject matter?

A. No, sir; there were no further resolutions that I recall at these meetings.

• • •

[1672]

CROSS-EXAMINATION.

By Mr. Seeley: ° ° °

Q. Sunset Lanes was one of the former AIBC chain centers, was it not?

A. Yes, sir.

Q. Were you present at the bankruptcy sale when all of the AIBC centers were sold at auction?

A. No, sir.

Q. Was there anyone present representing you?

A. No, sir.

Q. Did you make any effort to purchase that center from Mr. Vitolo after he became the successful bidder for it?

A. No, sir; my efforts to obtain it were from Brunswick after they forced him to turn it over to them.

Q. Do you know whether or not it is a fact that at the time of the bankruptcy sale the contract delinquencies of Sunset Lanes were in excess of $230,000?

A. Your question is: Do I know it?

Q. Do you know?

A. Now? That wouldn't surprise me. I just can't say that I remember it, but it wouldn't surprise me if that were correct.

Q. Was it Milton Rudo to whom you made an

[1673]

inquiry about whether Brunswick would sell Sunset Lanes to you?

A. One of several inquiries was directed to Milton Rudo.

Q. Again, when was that?

A. That was September 2, 1965, in Pittsburgh. Milton Rudo was present with Bernie Rudo, Dick Sharp, Jack Thomas, Dan Scott, all Brunswick representatives, and the Brunswick attorney, Mr. Wehrenberg.

Q. Did any of those gentlemen tell you that in the bankruptcy proceeding—the AIBC bankruptcy proceeding —an appeal had been taken from the sale and that that appeal had not yet been decided?

A. I never heard that mentioned by any Brunswick representative until after this action had been begun.

Q. Did you ever hear it from any other source before this action?

A. No, sir.

Q. Would you have purchased Sunset Lanes from Brunswick if it had not been able to warrant that it had a clear title to the center?

A. I would put it this way, Mr. Seeley. I would have purchased it if the terms were satisfactory, mutually satisfactory, subject to taking over Brunswick's position, and payment after Brunswick was able to produce

[1674]

good title. No lawyer would take any purchase otherwise.

Q. I wouldn't think so.

Were you present in the audience and listening when Mr. Hanigan, president of Brunswick, made his talk to the BPAA convention in San Juan in 1965?

A. Yes, sir. It was in response to that very speech—

Q. Is the answer yes?

A. —that I spoke. The answer is yes. I apologize.

Q. Thank you.

Have you ever, subsequently to that time, read the text of his statement as it was printed in the BPAA magazine?

A. Yes, I read it as it was printed in the BPAA magazine. I listened to it and took notes, copious notes, at the time that he was making the statements. And I read other reproductions of those 14—famed 14 points in other bowling publications, and publications that Brunswick put out.

[1675]

Q. And did you hear Mr. Hanigan make a statement during those remarks to the convention that the BCOD centers would be for sale?

A. I heard it. It wasn't true, but I heard it.

Mr. Seeley: I move to strike all except "I heard it."

The Court: So ordered.

Q. Did you hear him make that statement in these words:

"The best solution that we can see for you and for us is to operate until these houses are profitable, and then sell them on a multiple of earnings basis"?

A. I heard Mr. Hanigan make that statement, yes.

Q. Did he in the course of that address make any other statement about Brunswick selling BCO centers?

A. Yes, the substance of his statements, as those of all Brunswick representatives there at that time, was that these were just being repossessed as salvage operations, and they would all be for sale, and hopefully they would sell them to us.

Q. Did you hear Mr. Hanigan make any other statement as to when and under what circumstances they

would be for sale, other than the one I have just read to you?

A. No, he gave no details, neither was anybody else

[1676]

willing to give any details of——

Mr. Seeley: I move that everything except the "no" be stricken.

The Court: So ordered.
Don't volunteer any information, please.
Just answer the question.

The Witness: Yes, sir.

Q. Was it in March 1965 that Brunswick took over Sunset and began to operate it?

My best recollection is that the bankruptcy sale was in March 1965.

A. Well, Mr. Vitolo bought it at the bankruptcy sale, and if that was in March 1965, within a very short few days after that Mr. Vitolo sold it back to Brunswick or sold it to Brunswick.

Q. Is there such a thing in the bowling industry as a bowling season referred to by people in the industry?

A. Yes, it is a seasonal industry.

Q. Would you explain to the jury what that is?

A. It does better in the times of the year when the weather is not good.

In the summertime it is worse, in the fall, winter and spring it is better.

The worse the weather, the better the business.

[1677]

Q. Does almost all of the organized league bowling take place during the winter?

A. Usually from Labor Day until about Decoration Day, Memorial Day.

Q. And at the time of your conversation with Milton Rudo and others about your desire to buy Sunset Lanes, had Brunswick been operating it through a full bowling year?

A. No, sir.

Q. Have you ever attempted to purchase a BCO center from Brunswick after Brunswick had operated it for a full bowling year?

A. No, sir. After June 1965 I made no further attempts to buy anything that Brunswick was interested in.

• • •

[1682]

Q. How many bowlers, approximately, belonged to the six Airborne Instruments league about which you testified?

A. You are using the present tense. Do you mean did?

Q. Belonged, no, at the time you were testifying about their negotiations with Babylon Bowl and Sunset Lanes.

A. My best recollection after all these years is that it would be several hundred, four to five hundred individual bowlers in the six leagues.

Q. And that, of course, would be an exceedingly desirable piece of business to a bowling proprietor who was hungry for league business, would it not?

A. Yes, it was very appetizing business for all of us.

Q. And I understand that at the time that Babylon Bowl was approached by Airborne Instruments leagues with respect to arrangements for the 1965-1966 season,

that you had reached a decision as to what your league price per lane would be for that season; is that right?

A. Yes.

[1683]

Q. And that price was 60 cents?

A. Yes.

Q. Had you reached any decision or policy as to what inducements you would offer to leagues for the 1965-66 season?

A. I had as to what inducements I would offer these six Airborne Instruments leagues, if you mean all of the rest of the leagues in our house, yes.

Q. Yes.

A. It was different for those leagues.

Q. Then tell me as to the other leagues, what decision had you reached as to the inducements you were going to offer for the '65-'66 season?

A. They were going to be exactly the same as the preceding year, and the year before that, and the year before that.

That would be, if you'd like the details of it, I will give them to you.

Q. I would. I was just going to ask.

A. That would be trophies for the league, trophies for the best scores in the league, trophies for the best team in the league, and in some instances first, second and third place trophies.

I have to use it generally because it was not absolutely frozen into exactly the same with respect to

[1684]

every single league; sometimes they were more, depending on the sizes of the league and also depending upon

whether there were four persons bowling on the team in the league or five persons or three persons.

Q. All right.

A. And there was a—we would give them a drink of their choice at Christmastime, every member of the league, whether it was a drink of alcoholic beverage nature or otherwise, whichever they wanted.

That was the arrangement as of that time for our leagues in our house, regular leagues in our house.

Q. No turkeys?

A. No, no turkeys and no bottles for our leagues as of that time.

Q. Addressing myself now not to Babylon Bowl particularly but just to Long Island bowling centers in general, you were telling the jury what inducements are, and you mentioned that turkeys at Thanksgiving and bottles of liquor at Christmas and a banquet at the end of the season, and then you said "more and more and more."

Would you amplify your answer now and tell us what "more and more and more" included?

A. Well, I was talking about Brunswick's inducement at the time, and "more and more and more" indicated, for example, a card which would entitled every league bowler

[1685]

bowling in a Brunswick house to have 20 free games of bowling during the following summer at Brunswick's expense; free game passes as rewards for the type of bowling they might be doing while bowling in the leagues; and another inducement was that they would be able to participate through the bowling in the Brunswick houses in roll-offs, which if they were successful they would then go to Washington at Brunswick's expense and bowl there for further roll-offs, winners to be sent upon a European trip by Brunswick at Brunswick's expense.

Q. All right, now—

A. There are still more, if you want—

Q. I don't want to interrupt you. You go right ahead. I thought you paused because you had finished.

A. No. I will give you more that they (Sunset) offered.

Trophies were given much more generously than we were offering; there was what we in the trade refer to as banquet, but it is really a buffet, for the bowlers at the bowling center's expense, at the end of the season, that was offered by Brunswick; in addition to the lower price that I have already testified to, was offered at 50 cents a game compared to 60.

And the Christmas drink, I didn't mention that. Brunswick included that in the "more and more and more."

[1686]

Q. As a matter of fact, when you made that statement ending with the words "more and more and more," were you not testifying as to the inducements which these leagues had received from Viking Lanes?

A. No, I testified on several occasions that Viking Lanes was giving more in the way of inducements than Babylon Bowl was giving its league, but substantially less than Sunset offered them to come away from Viking and bowl at Sunset.

Q. And when you said these inducements or extras consist generally in the trade of turkeys and so forth, you say what you really meant was just Sunset Lanes?

A. No, I'm talking about generally in the trade they—that is used as an inducement, yes, where competition requires it, it is used as an inducement, but the amount of the inducement is the thing that I made reference to.

Q. Right. Now, generally in the trade what inducements are there that you know of other than trophies,

turkeys at Thanksgiving, liquor at Christmas, buffet at the end of the season?

A. You'd like me to name additional ones? Yes, I know of many more that are used as inducements by some people in the trade.

Some use bowling balls given as gifts to the

[1687]

leagues to shoot for and roll for; some give cash prizes for the leagues to compete for; some even give cash inducements back to the league to add to its prize fund, this has been known also.

It takes so many different forms, I have known some bowling proprietors who took some of their league officers on trips to theaters, parties, and things of that sort.

* * *

[1697]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Dankoff, earlier today you said that—you were looking for some pieces of paper which were in your papers on your lap, which were related to a question I asked you about comparative—competitive methods; did you find them?

A. Yes, sir; this is one published by Brunswick relating to 1965.

Mr. Hoffmann: Let me have it marked first, if I may.

I am sorry, Mr. Seeley, I only have the one copy.

Mr. Seeley: May I look over your shoulder?

Mr. Hoffmann: Would you please mark it as plaintiffs' Exhibit 59 for identification a document entitled, 1965 BCOD summer bowling

[1698]

festival.

(P-59 marked for identification.)

Mr. Hoffmann: I hope your Honor will bear with me, I only have this one copy.

Q. Mr. Dankoff, I show you what has been marked as Plaintiff's Exhibit 59 for identification, and ask if you can tell us what it is?

A. It is a photocopy of a publication put out by Brunswick offering junior bowling—bowling to children—three games, shoes, hot dog, coca-cola, for a dollar.

And this related to the summer, but I also do have personal knowledge of the fact that the same offer was made in the winter, junior leagues, as well.

Q. Confining yourself to just the document, you say this was a publication put out by Brunswick; do you know that to be so?

A. I know that to be so.

Mr. Hoffmann: I offer it in evidence, your Honor.

The Court: Any objection?

Mr. Seeley: One question, your Honor.
Do you know the year in which this—it says 1965.

The Witness: It bears 1965.

Mr. Seeley: No objection.

[1699]

The Court: Into evidence.

(Exhibit P-59 received in evidence.)

By Mr. Hoffmann:

Q. Mr. Dankoff, plaintiff's 59 in evidence says:

"Three games, shoes, hot dog, coke, a dollar. Good every Saturday, May and June 1965. Good every Monday and Friday July and August 1965. No limit to number of these tickets you can buy or use on Junior Friendship Day."

Do you know about how much it cost your centers in 1965 to supply shoes to a bowler?

A. How much it cost us to supply shoes?

Q. Let me put it this way.

Did you rent shoes in that period?

A. Yes.

Q. What was the rental charge for shoes?

A. 15 cents for juniors and 20 cents for adults.

[1700]

Q. And how about a Coke, do you have any recollection of what you charged for a Coke in your center in 1965?

A. A small Coke was 10 cents and large Coke was 20 cents.

Q. Now, three games. How much did a game go for in 1965; what did you charge for a game at your center?

A. For junior bowling, 45 cents. And for adult bowling, 55 cents and then it went to 60 cents.

Q. Can you total up for us what the value of those concessions would be if given out by your centers in 1965?

A. Somewhere between $1 and $1.90 at our prices in our bowling centers for the total package.

Q. Now, did you ever give to bowlers concessions as costly as that?

A. Well, that's a pretty general question.

At that time our actual average cost the year round for each line of bowling, our cost was in excess of 40 cents a line.

Q. How much did you charge again per line at that time?

A. 45 cents a line junior, 55 adults and 60 cents, it went up in September, but every line then cost us in

[1701]

excess of 40 cents a line without the cost of the shoes, without the cost of the Coca-Cola or the hot dogs.

Q. In point of fact, these items, the shoes, the hot dogs and the Coke, were regarded, were they not, in your usual practice as additional income which would come above money paid for the permission to roll a game; isn't that right?

A. Yes. Every bowling center necessarily a combination of several businesses. It is a bowling business, it is a restaurant business, there is for adults a bar and lounge business usually, except in such states as prohibit them.

And there is also the business of selling bowling accessories.

All of those are essential elements going into the operation of the total bowling center.

Q. Now, sir, you stated in answer to a question of Mr. Seeley what you thought the cost to Brunswick was of the Bowl-Your-Way-to-Europe program.

What was that estimate?

A. In my opinion it was 50 cents a bowler participant, meaning a league bowler, in the entire Brunswick operated chain per season.

Q. I thought you had said, in listening to your answer to a question of Mr. Seeley's, that it was 50 cents

[1702]

a line, but probably I was mistaken.

A. If I said that, then I misspoke. That would be impossible because that's all they were getting was 50

cents a line for bowling. I meant 50 cents per bowler per season.

Q. And was it this 50 cents a bowler to which you referred when you say you confronted Brunswick representatives?

A. That's right.

Q. And which they admitted inferentially was so; isn't that testimony?

A. That's right.

Q. Now, have you learned from your experience that when the Brunswick officials said they were repossessing equipment in centers in financial trouble, and would sell off the centers to independent proprietors, have you learned whether or not that happened in fact; do you know whether Brunswick ever did that?

A. I know that they at the time of the last trial, they asserted they had sold two out of the total of almost 180 bowling centers that they repossessed and operated.

Q. They sold off two?

A. Yes.

Q. Do you know of any others they may have sold

[1703]

off?

A. I have heard of none since that time, of the BCOD operated centers.

Q. You yourself tried to buy some, did you not?

A. I so testified.

Q. That's what you testified about before both in answer to my questions and Mr. Seeley's?

A. Yes.

Q. Now, there has been some talk, mostly found in the form of questions put to you, concerning repossession of equipment. Mr. Dankoff, do you distinguish between

repossessing a pinsetter or a lane, and repossessing a bowling center; is there a difference?

A. Yes, material difference.

Q. Will you explain the difference for us?

A. Well, if there is repossession of the equipment then the conditional vendor, in these cases the bowling manufacturer, would take possession of the equipment and move it out of the bowling center.

Q. By "equipment" you mean pinsetters, the lanes, things of that sort, that are movable?

A. The settees, I'm talking about all personal property, the lanes even are considerable movable personal property. Masking units, pinsetters, settees, the ball racks upon which balls are set forth, and

[1704]

generally it includes everything because the security paper is all-inclusive, everything that was sold by the vendors is included.

Everything on repossession, if it is a true repossession, then they actually take it out of the possession of the vendee and remove it and dispose of it as the vendor desires.

Q. A bowling center is something more than just lanes and pinsetters, is it not?

A. Yes.

Q. Would you tell us what the difference is between repossessing machines and lanes, and taking possession of a bowling center?

A. Well, if a repossessor also technically repossesses that remains in possession in the bowling center, and operates it, then that repossessor then comes into possession of additional assets that were formerly part of the bowling center and not part of the bowling sale.

For example, in most instances where there is any alcoholic beverage sold, whether it is beer or hard liquor or both, there is a liquor license involved. There is leased premises involved, there is the landlord to be paid.

Q. When you say "leased premises," you mean someone else in most instances owns the real estate;

[1705]

is that what you're saying?

A. In most instances. As a matter of fact, even in the rare instances where a bowling operator is also the owner of the real estate, it was generally held by another corporation other than the one which purchased the bowling equipment.

But in most instances the owner of the real estate was not the operator.

[1706]

Q. So that if Brunswick acquires a bowling center which has been in default on its debts, it is acquiring interests which include the following:

The lease, if a lease exists, is that right; the right to use a piece of real estate if it is not on lease in some other way; is that right?

A. Well, it is questionable whether they could acquire the exact lease. They'd have to make some new arrangement with the lessor to permit them to stay in and operate.

Q. But they take over if they are going to operate some kind of right to use the premises?

A. I would know of no other way they could remain in possession.

Q. Are there other things as well which go into a bowling center which would pass along to Brunswick in the instance where it acquires a bowling center?

A. Well, there would be—there could very well be carpeting that was purchased which is—these days—in those days an essential part of every bowling center, a lot of it. There would be tables, chairs, lounge furniture, in many cases quite elaborate.

Q. Would you agree that good will would also be something acquired?

A. Yes, if one is able to take it over as a going

[1707]

operation, it is much more valuable than if one were to pull out all of the equipment and wait until new equipment is installed.

Q. Anything else you can think of?

A. I think we have pretty well exhausted it.

Q. Would leagues be included, too?

A. That's what you meant by "good will", I assumed, the disposition of the bowlers and the league bowlers and the open bowlers to come to this particular place and affiliate themselves with it as their bowling home.

Q. All of this is vastly more, is it not, than just picking up some pinsetting machines and taking them back and putting them into a warehouse or using them some place else?

A. Entirely different operation, entirely different ballgame.

Q. If I understood you on cross-examination, you said that Viking lost leagues to Sunset; is that right?

A. Well, the Airborne Instrument Leagues came from Viking, that went to Sunset that we competed for.

Q. Do you know what happened to Viking after those leagues were lost?

A. Yes. Within about a year they were forced to

[1708]

close. They failed and closed up.

Q. Now, Mr. Hanigan asked you a question——

The Court: Who?

Mr. Hoffmann: I'm sorry. Mr. Seeley.
My apologies.

The Court: I thought there was a new lawyer here.

Mr. Hoffmann: No, your Honor, my mind sometimes jumps ahead as well as backwards.

Q. Mr. Seeley asked you a question having to do with the appeal from the AIBC sale, and you testified about that, did you not?

A. I testified that I never heard about it until after this litigation began.

Q. What you heard you heard from other sources; is that your testimony?

A. I heard from Brunswick witnesses.

Q. And do you know of your own knowledge whether or not such an appeal was ever taken or filed?

A. I have absolutely no knowledge about it. Mr. Hoffmann, you asked me about the other papers that I found during the recess——

Q. Thank you so much, Mr. Dankoff.

You testified before about Plaintiff's 59 now in evidence as the paper which you found among

[1709]

your papers during the recess; is that right?

A. Yes, sir.

Mr. Hoffmann: Miss Costello, would you be kind enough to mark as Plaintiff's Exhibit 60 for identification a two-page——

The Witness: I stapled them. There are two separate ones.

Mr. Hoffmann: I will unstaple them.

Single page entitled, "Your Summer Bowling Festival of Fun, Brunswick Circle Lanes."

(Exhibit P-60 marked for identification.)

Mr. Hoffmann: Once again, your Honor, I'm sorry, we just have a single copy.

Q. Mr. Dankoff, I am going to show you plaintiff's 60 for identification and ask you if you can tell us what it is.

A. This is a flyer, photocopy of a flyer published by Brunswick with relation to one of their BCO operated houses called Brunswick Circle Lanes in which they offer the summer bowling programs which included free open play coupon books.

Q. Before you go on, excuse me.

A. You're right.

Mr. Hoffmann: I offer it in evidence.

Mr. Seeley: No objection.

[1710]

The Court: Into evidence.

(Exhibit P-60 received and marked in evidence.)

Q. Now, then, Mr. Dankoff, what does 60 show?

A. Free open play coupon books each worth $5 for each of our 1964-1965 winter league bowlers, free open play coupon books each worth $5 for each bowler bowling in one of the 1965 summer leagues, every Saturday, May and June, and every Monday and Friday during July and August, for junior bowling, 3 games, hot dogs, shoes and

Coke for $1, and practicing time on Friday mornings or afternoons, bowling as many games as they might wish—this applied to adults—for the total price of $3—of $1 for three games, and free instructions in addition.

Those are the principal items.

Q. Could you afford instructions at your bowling centers at this time, 1965?

A. Not for open bowlers, but as part of league bowling we gave instruction to league bowlers only.

Q. But this applies to open bowlers, does it not?

A. It would indicate that because there is no specification of any particular type that it supplies to.

Q. Now, could you give us any kind of—let me

[1711]

withdraw that.

Do you know from your experience about how much it costs to give instruction to a bowler?

A. I don't think one can ascribe an exact amount per game, but generally we'd just use one of our regular personnel for that. In season when we have a larger number of leagues we hire somebody to devote him or herself to instruction entirely.

Q. So some of these items we didn't even need your opinion on because the exhibit states what the items are worth, and if I may, your Honor, I think I had better show it to you——

The Court: It is in evidence anyway, is it not?

Mr. Hoffmann: Yes. I just thought you wanted to see it.

I'd just like to read into evidence the particular lines in which there is a price attached to the items.

The Witness: I already did that. I read it a few moments ago.

Mr. Hoffmann: Free open play coupon books each worth $5 for each of our 1964-1965 winter league bowlers.

Free open play coupon books each worth $5

[1712]

for each bowler enjoying one of our 1965 summer leagues.

Every Saturday during May and June, and Monday and Friday during July and August, will be Junior Friendship Days. Three games, hot dogs, Coke and shoes, $1.

Adult daze, May through September, Fridays 9:30 to 11 or 1 to 3, bowl as many games as you wish for the total price of three games for $1, minimum three per lane, free instructions available.

Can you tell us from your experience, Mr. Dankoff, what is the maximum that any one bowler that you know of ever came in as an open bowler to your bowl and bowled?

A. Maximum number of games?

Q. Yes.

A. That would be—that could go anywhere from one game to—I have seen as many as 50, one man bowled 50 games.

Q. One man bowled 50 games in one day?

A. In one 24-hour period.

[1713]

Q. He would get a good deal with this, would he not?

A. Well, I don't know about that. That was limited to the hours of Friday morning and Friday afternoon.

The Court: He must have been on three shifts, wasn't he?

The Witness: Some of them will start bowling some afternoon and bowl to the next morning, sir.

The Court: With or without a turkey.

The Witness: That's right. If they get three strikes in a row, that is called a turkey.

Mr. Hoffmann: Miss Costello, will you be kind enough to mark as P-61 for identification a document entitled "Brunswick, The First Name in Bowling, is remodeling, is modernizing," and so forth.

(Marked Exhibit P-61 for identification.)

Mr. Hoffmann: Your Honor, again I apologize. I have only one copy, which I am showing to Mr. Seeley.

(Shown to counsel and the Court.)

By Mr. Hoffmann:

Q. Mr. Dankoff, I show you P-61 for identification, and ask if you can tell us what it is.

A. It is a photo copy of a flyer published by Bruns-

[1714]

wick indicating that they are remodeling and modernizing the equipment in one of the bowling centers that they repossessed in California. And it states that they will operate Brunswick Bolero Lanes, having the ultimate in service, the finest lane conditions, and the friendliest atmosphere. Brunswick Bolero Lanes it was to be called upon completion of modernization.

Mr. Hoffmann: I offer P-61 into evidence.

Mr. Seeley: No objection.

The Court: I didn't find out where it was. Where is Lemon Grove?

Mr. Hoffmann: He said California.

The Court: Into evidence.

(Exhibit P-61 received and marked in evidence.)

By Mr. Hoffmann:

Q. I note at the top of the exhibit, "Brunswick, The First Name in Bowling, is remodeling, is modernizing equipment and will operate Brunswick Bolero Lanes, 7065 Broadway, Lemon Grove."

Do you share this designation, do you agree that Brunswick is the first name in bowling?

A. Well, they were in the bowling business first, before AMF was, but—I think between the two of them, that each would dispute the other's claim to the same effect.

[1715]

The Court: At least second alphabetically, you will concede that, Mr. Hoffmann, right?

By Mr. Hoffmann:

Q. One is first and the other second, is that your testimony?

A. I don't think it makes any difference.

Q. Please answer my question. One would be first and the other second?

A. I would guess that would have to be so. They were both equally important in the bowling industry.

Mr. Hoffmann: I have no more questions.

The Court: Any recross?

Mr. Seeley: Just a couple.

RE-CROSS-EXAMINATION.

By Mr. Seeley:

Q. Do you have any knowledge, sir, of what the age and physical condition of that Bowlero Lanes in Lemon Grove, California, was at the time Brunswick took it over?

A. No, sir; there were too many of them for me to keep track of all 180. I just don't know. That one, and many others, I don't know.

Q. Does your company operate any bowling centers in the Colorado area?

A. No, sir.

[1716]

Q. Do you have any knowledge as to what the nature of the competition for summer bowling business was in 1965 in the Colorado Springs area?

A. No, sir; I have never been in Colorado.

Q. Now, I don't know whether I misunderstood you or not, but did you say, in answer to a question by Mr. Hoffmann, that the cost to Babylon Bowl of three games, and shoes, and a Coke, to be $1.80 to $1.90?

A. I said that's what we would sell it for.

Q. If you have a bowling lane which otherwise would be vacant, how much does it cost you to rent that lane three games for a dollar?

The Witness: May I have the question again, please?

(Question read.)

Mr. Hoffmann: I am going to object to the question, your Honor, as not proper cross-examination. It makes an assumption for which there is no underlying testimony.

The Court: Mr. Seeley is on recross-examination, Mr. Hoffmann. I will permit it.

Can you answer it, or no?

A. Mr. Seeley, there is no bowling center in the world that does not have a major portion of each 24-hour period when the lanes are not used. In effect, we are

[1717]

a service business and we sell time only, mainly what we call prime time. All other time—and that is the majority of each 24-hour period—is dead time.

But if I were to accept the intimation of your reasoning, then if we got 10 cents a line, that's better than nothing.

[1718]

Q. Right.

A. Technically, it may be so, but one couldn't stay in business very long, not when we know that every line, the year around, costs us in excess of 40 cents a line.

You cannot remain in business very long by selling three lines, and a Coke, and a hot dog, and giving free shoes for a dollar.

The Court: You mean rent free shoes. You don't mean to give them.

The Witness: Well, the use of the shoes. When I say give them, I meant the use of them. I'm sorry.

The Court: Yes.

A. (continuing) So that if you mean do I agree that ten cents is better than zero, the answer is obviously yes.

• • •

[1719]

JOHN L. HANIGAN.

DIRECT EXAMINATION.

Mr. Hoffmann: With your Honor's permission, my colleague, Mr. Agee, is going to read from the lectern.

We thought it might be faster. He is going to read from the testimony given by Mr. Hanigan. We had broken off in the middle of that the other afternoon.

[1720]

The Court: All right.

Mr. Agee: I will be reading from the transcript, Volume 6, of the first trial. We have chopped this up considerably. I am going to begin at page 734.

The Court: The testimony of whom?

Mr. Agee: This is J. L. Hanigan. I am resuming my role of Mr. Hanigan.

And this was taken in April of 1968. The bottom of page 734 in the trial transcript, which refers to page 100 of the original transcript.

"Mr. Hoffmann refers to the statement"—

Mr. McNeill: Excuse us, your Honor. My understanding was that we left off at page 728. Have you skipped now to page 734?

Mr. Agee: Yes, we have, if that's all right. Page 734 of Volume 6. And as we have done in the past, the questioner in all instances is Mr. Hoffmann and in this instance the answerer is Mr. Hanigan.

"Moving to Page 100, the bottom two-thirds, Mr. Hoffmann refers to the statement made on Page 9 of 'Let's Talk Facts';" and that's Plaintiff's Exhibit 28:

"Just as you must be paid for games bowled—

[1721]

The Court: You lost me. What page is it on? 734, you said?

Mr. Agee: 734 of Volume 6. I am physically reading from that Volume 6 of the first trial transcript, picking up at the bottom, and making the appropriate reference to the original.

The Court: Proceed.

Mr. Agee: "Just as you must be paid for games bowled so must we be paid for equipment and services sold. This is nothing more than simple good business sense." And then dropping down a little bit. "Carrying a customer of this kind," referring to a proprietor who hasn't been paying his bills, 'is not good or fair to the bowling industry and certainly not to Brunswick.'

"Is this an expression of Brunswick's policy, that it would not carry customers who did not pay their bills?"?

"Answer: It says here it is also a fact that there are proprietors who purchase new equipment and then choose not to pay even though lineage and income is adequate. This action, of course, allows these proprietors to gain a considerable and unfair competitive advantage over the proprietor who pays his bills. Carrying a customer of this

[1722]

kind is not good or fair to the bowling industry and certainly not to Brunswick.

"That is a statement of our policy."

"Question: Are you suggesting that there might be a difference between carrying proprietors who purchase new equipment and then choose not to pay even though lineage and income is adequate and carrying proprietors who are in the same posture but whose lineage and income is inadequate?

"Answer: We have in many cases extended the time of payment for proprietors who are doing their very best to pay us but who have inadequate cash flow.

"Question: But in either case whether the lineage and income was adequate, or inadequate, wouldn't it be unfair, competitively, to carry the delinquent proprietor in terms of the consideration set forth in the second sentence, that is to say, this action——

"Answer: It would be if we carry them forever; but we have definite policies which were set in December, 1964, which make sure that this does not happen. But at the same time, it was our feeling when they were set that some of these proprietors needed help, and being human we

[1723]

tried to help them. However, when we became convinced that someone was either beyond help or was deliberately misleading us, why we then decided that the only thing to do was to repossess the equipment.

"Question: Well, isn't this paragraph designed to tell the reader that when the proprietor fails to pay whether he has lineage and adequate income or not, the permitting him not to pay allows the proprietor to gain a considerable and unfair competitive advantage over the proprietor who pays his bills, isn't that the sense of it?

"Answer: Well, this, of course presupposes that the two proprietors are in fact competitive.

"Question: Indeed yes, because of the sentence, the phrase unfair competitive advantage. But premising that that is a fact——

"Answer: I would like to read the second paragraph.

'In cases where a proprietor is experiencing difficulty and is not meeting his obligations, we will make every effort to work out a practical solution to our mutual advantage. A credit counsellor will determine if refinancing is possible and practical. Once refinancing is arranged

[1724]

attendance at a management school or field seminar may be one of our requirements to help the proprietor in managing his business.'

"I don't see anything inconsistent in the two paragraphs.

"Question: Well, I put it to you that whether or not the proprietor experiences difficulty and whether or not he goes to attendance at a management school or the field seminar, whether or not his lineage is adequate, whether or not his income is adequate, that

if he is permitted not to pay his bills he gains a considerable and unfair competitive advantage over the proprietor who pays his bills. It there anything wrong with the statement I just made?

"Answer: Nothing at all; except that I didn't say that anyone was permitted not to pay their bills. They were permitted to have reasonable extensions of their debt to us. This does not enable them to have an unfair competitive advantage, because if his cash flow is low, he has to keep competitive in order to meet the payments that we would set out in such a program."

[1725]

"Question: Is it the policy of Brunswick to give upon demand extensions of credit on the same terms and conditions of credit to all of its customers who purchase the same kind of equipment from Brunswick?

"Answer: It has been since December 1, 1964.

"Question: And that is a date prior in time to this, 'Let's Talk Facts?'

"Answer: That's correct.

"Question: Now, if that is so, what do you mean by these other statements about how they would be refinanced under certain circumstances and how there will be different considerations involved where lineage and income is inadequate?—"

The Court: No, no. —"involved where lineage and income is adequate."

Mr. Agee: —"adequate or where lineage or income is inadequate."

I apologize.

The Court: That's all right.

Mr. Agee: "Answer: We have set certain credit policies for extensions beyond which we will not go. If on examination of the books of an operator we find that he is going to be able to generate cash enough to run the business

[1726]

properly and pay us within these credit policies, we will extend his debt. We will extend it also with the proviso that if his business improves his payments will be accelerated to us so that he does not have an unfair"—advantage, presumably—"over someone else who may be doing a better job.

"Question: Well, may we consider that for a moment. Suppose that there is a competitive independent bowling proprietor who is competing for the patronage of the same bowlers in the same geographical area where there is a well-meaning independent bowling proprietor who can't pay his bills and who because of circumstances you describe Brunswick is willing to carry or extend credit for, does he not get a competitive advantage over the proprietor who pays his bills?

"Answer: Well, that depends on how long a period of time you want to look at the thing. Because, actually, as part of this plan of extending credit we do, because we are taking more risks over a longer period of time, increase the rate of interest which we charge. And, consequently, you might say that the proprietor who pays his bills on time and does not get an increase in

[1727]

his interest rate has an advantage over the man who finds it necessary to extend . . .

"Question: You would say that even though he has been deprived of the use of the money which he paid over to Brunswick in order to pay his bills on time?

"Answer: If you take it over a long enough period of time, yes, I would.

"Question: And if the interest rate is such that the interest which is being paid as excess or overage by the delinquent proprietor makes up for the use of the money had it been enjoyed by the prompt payer, isn't that so?

"Answer: The prompt payer may have the advantage.

"Question: And, of course, it is possible, is it not, that the prompt payer might be able to use the money which he paid to Brunswick to improve his bowling center, to buy A-2 equipment and to otherwise make himself into a more effective competitor, isn't that also so?

"Answer: That is also possible.

"Question: But in any case where Brunswick is operating a center in the same competitive area involving both the delinquent payer who is

[1728]

favored by being given a credit extension and the prompt payer which pays the money to Brunswick on time, the Brunswick operated center which is competing against the other two would have the dual advantage, one the advantage of the use of the money from the independent proprietor who has paid on time, and secondly, accelerated rate of interest or extended credit interest or additional pay on of interest which is assessed in order to keep the delinquent payer going, is that so?

"Answer: That Brunswick would have an advantage over both of them?

"Question: Both ways?

"Answer: Oh, I think not, because in most instances wher we have taken over a house to salvage it, the house has been run down, we have to rehabilitate it, we are taking depreciation at a rate which in very many instances is more than the rate of depreciation that some of the proprietors use. Consequently, I think we are pretty much on all fours; and, of course, the other thing about this, which is the important thing, is whether we have in fact taken advantage of the situation by unfair pricing policies.

[1729]

"Question: By pricing are you referring to lineage or to equipment?

"Answer: Lineage, particularly.

"Question: Are we to conclude from the questions put by me and the answers given by you in the last few minutes that the sentence is true which says that 'Those proprietors who purchase new equipment and choose not to pay even though lineage and income is adequate are given a considerable and unfair competitive advantage over the proprietor who pays his bills,' that is true, isn't it?

"Answer: If he chooses to, sure, we let him do it.

"Question: Would you be kind enough to turn the page of 'Let's Talk Facts,' second paragraph on page eleven,"

Incidentally, that's plaintiff's Exhibit 28.

"One alternative considered is to give the proprietor a free ride; Brunswick does not collect, and the center remains open to operate with no equipment overhead.

"Is there equipment overhead when Brunswick repossesses and operates the center itself?

[1730]

"Answer: Oh, yes.

"Question: Is the center so operated charged with interest, do you know, on the equipment?

"Answer: He is charged with depreciation on the equipment.

"Question: Is interest a considerable factor for those centers who are in debt to Brunswick for the purchase of equipment?

"Answer: Yes.

"Question: So to that extent can we conclude that the Brunswick center has a considerable advantage over the independent proprietor who is in debt for equipment to Brunswick?

"Answer: I wouldn't think so, no.

"Question: Well, you said, if I understood you just a moment ago, that the interest factor for the independent proprietor who owes Brunswick for the

equipment is considerable, a sizeable amount, is it not?

"Answer: So is depreciation."

And, if we may, I would like to go to the deposition of Milton Rudo.

Mr. McNeill: Your Honor, could we have a moment for housekeeping? We haven't been ad-

[1731]

vised in advance——

The Court: How long is it for Mr. Rudo?

Mr. Agee: We have cut this to the bone, your Honor. I believe I can do it in ten minutes.

The Court: There will be a short recess, members of the jury. I will give Mr. McNeill an opportunity to review that.

What is after that?

Mr. Hoffmann: Mr. Davis.

The Court: A live witness, right?

Mr. Hoffmann: A live witness. And you may be pleased to know it is our last one.

The Court: All right. The jury will be glad to know that. A short recess.

(Short recess.)

[1732]

Mr. Agee: Your Honor, with your Honor's permission may I just read about ten seconds' worth more of the depositions of Mr. Hanigan at the end where I finished, and due to failing eyesight misread where I was supposed to stop?

The Court: Failing doctrine, or eyesight?

Mr. Agee: Failing eyesight. It is also the doctrine of failing eyesight.

I had concluded, if I may pick up just to catch the sequence:

"Question: So to that extent can we conclude that the Brunswick center has a considerable advantage over the independent proprietor who is in debt for equipment to Brunswick?

"Answer: I wouldn't think so, no.

"Question: You said, if I understood you just a moment ago, that the interest factor for the independent proprietor who owes Brunswick for the equipment is considerable, a sizeable amount, is it not?

"Answer: So is depreciation.

"Question: Do you know whether good accounting practice permits the proprietor who has bought on an installment basis from Brunswick to take depreciation?

[1733]

"Answer: I think the IRS will allow him to take it over a ten-year period, but some people take it over twenty years.

"Question: Do you know how Brunswick takes it?

"Answer: Yes, sir."

Mr. Agee: We may go on to the deposition of Milton Rudo.

The Court: What page?

Mr. Agee: Again I read physically from Volume VI. It begins at page 757, your Honor.

Now, these excerpts were taken from depositions of Mr. Rudo which were actually conducted in split sessions beginning in March 1967, it was adjourned and continued in June of 1968.

I am beginning at the bottom of 757 of Volume VI of the transcript of the first trial:

"Question: Where do you live, Mr. Rudo?

"Answer: Hyde Park, Illinois.

"Question: The address?

"Answer: 1777 Balsam Road."

If I may skip down, your Honor.

"Question: What is the business address?

"Answer: 69 West Washington.

"Question: What is the business?

[1734]

"Answer: I'm with Brunswick Corporation.

"Question: What is your position with Brunswick?

"Answer: I am vice president of the corporation.

"Question: What is your function as vice president of the corporation?

"Answer: I am a division head, division supervisor."

Moving to page 766 of the transcript, this is actually page 41 of the original deposition. Beginning with the question which reads in the middle:

"Question: At the time when the decision was reached to go into the operation of bowling centers in 1964, was there any decision reached as to the number of centers which Brunswick might acquire?

"Answer: No, because we had no concept of what existed as to what we might acquire.

"We didn't know if it would be ten or an astronomical number.

"Question: In the summer of 1964, how many bowling centers were there, approximately, in the United States?

[1735]

"Answer: 11 or 12 thousand. I'm not sure.

"Question: Would you know approximately how many of those had important Brunswick installations, such as lanes and pinsetting equipment?

"Answer: I'd say approximately half. I'm not certain of the exact number.

"Question: Can you again approximately tell us whether in the summer of 1964 most of the bowling centers using Brunswick equipment were in debt to Brunswick?

"Answer: Were most of them?

"Question: Yes. By most, meaning more than half.

"Answer: In fact I would presume so but someone else could answer it more factually than I can.

"Question: What is the situation in the United States today, can you tell us the approximate number of bowling centers?

"Answer: There is approximately 11,000 bowling establishments in the United States today.

"Question: Again, can you tell us approximately how many have purchased important equipment such as lanes or pinsetting equipment from Brunswick?

[1736]

"Answer: I would say it is about the same. Maybe a percentage or two off. I don't know.

"These are not new ones. These are the same existing—what is left is what I am interpreting.

"Question: Meaning from your prior testimony approximately one-half? Is that your testimony?

"Answer: I'm sorry, sir, I didn't hear you.

"Question: Meaning approximately one-half of those bowling centers?

"Answer: That's correct."

[1737]

Mr. Agee: Going to page 780 of the transcript.

The Court: Page what on the deposition?

Mr. Agee: Page 21.

"Question: Have you since 1964 sold any bowling centers, has Brunswick?

"Answer: Four.

"Question: Four?

"Answer: Yes.

"Question: How many has it acquired since 1964?

"Answer: We acquired 131 in the United States in 1965 and 30 in 1966."

Page 265 of the deposition, page 783 of Volume VI of the prior transcript:

"Question: Does the division budget show individual items of gain or anticipated loss for the separate centers operated by Brunswick?

"Answer: Well, each house has its yearly budget.

"Question: Is that referred to in any way in the annual five year projection as to which you have been testifying?

"Answer: No, sir.

"Question: Does the budget include, the yearly budget for each house, include anticipation

[1738]

in any way? That is to say, does it include expected earnings for the coming year?

"Answer: Yes, sir, and so far our people have been overly optimistic.

"Question: In the budgets for the Brunswick owned or operated centers, is there any provision made for depreciation and interest?

"Answer: For depreciation and interest where it is applicable.

"Question: Under what circumstances is interest applicable?

"Answer: Where we have to pay interest.

"Question: Are there any circumstances under which the Brunswick centers has to pay interest to the Brunswick Corporation?

"Answer: To the Brunswick Corporation?

"Question: Yes, or to any other branch of Brunswick.

"Answer: Offhand, I can't answer that.

"Question: You don't know one way or the other?

"Answer: No, sir.

"Question: Do you know one way or the other as to whether or not the Brunswick operated center pays interest on so much of the initial cost of

[1739]

the large equipment such as pinsetters and alleys which has not been paid for by the initial purchaser?

"Answer: There is none, and we don't get involved in the original purchaser once BCO takes it over."

Page 314 of the deposition, page 795 of Volume VI:

"Question: Mr. Rudo, you have been continuously president since February of 1967 to the present?

"Answer: That's correct.

"Question: Do you know how many bowling centers were operated by the Bowling Division?

"Answer: I know approximately.

"Question: What is that?

"Answer: Somewhere between 175 and, something around 175 right now, in Canada and the United States.

"Question: Has the number been any higher during the period when you were president?

"Answer: It may have gotten to 180.

"Question: If I suggested the number 198 to you, would that be wrong?

"Answer: It doesn't register with me ever having had that many at one time.

[1740]

"Question: How about the number 183?

"Answer: It's possible.

"Question: You don't know one way or the other?

"Answer: 198 doesn't register. 183 is possible.

"Question: Do you know when Brunswick Bowling Division first came into being?

"Answer: As it's now constituted?

"Question: Yes, as it is now constituted.

"Answer: February, 1967.

"Question: Prior to that did Brunswick maintain a division or branch for the purpose of operating bowling centers?

"Answer: Yes, sir.

"Question: What was that called?

"Answer: It was called the Bowling Center Operations Division.

"Question: And in February of 1967, was there any change in the organization or structure of that

unit, branch, or division of Brunswick which had among its functions the operation of bowling centers?

"Answer: It was consolidated with the Bowling Division, which at that time had its responsibility

[1741-1742]

to sell bowling equipment, lanes, and supplies.

"Question: Now prior to February of 1967, do you know—when I say prior, I mean in or about that time, but before the change—do you know how many bowling centers were owned or operated by Brunswick?

"Answer: I was head of the B. C. O. Division. Approximately, yes. I don't remember specifically.

"Question: When you say you know approximately, can you tell us approximately how many?

"Answer: To the best of my knowledge, as I remember it, the most we had ever got to operating was around 175 to 180.

"Question: This is prior to February of 1967?

"Answer: Yes, sir.

"Question: In 1965, in February, how many did you operate, if you know?

"Answer: January—what did you say?

"Question: 1965, January or February of that year, if you know, how many did you operate?

"Answer: In January I think we operated one.

"Question: In 1965?

"Answer: Yes, sir.

[1743]

Mr. Agee: Moving to page 317 in the deposition:

"Question: At the end of 1965, about how many did you have or operate?

"Answer: Approximately, oh, if I recall correctly, around 130 in the States. There may have been ten or fifteen in Canada.

"Question: Now as to the 130 in the States, if you know, were any of these new installations, new bowling centers, created by Brunswick for the first time?

"Answer: I don't know what you mean. I don't know—if we sold prior to—I don't know what you mean."

"Question: Do you know whether during the year 1965 Brunswick acquired by replevin, foreclosure, or any other method bowling centers previously operated or owned by persons or organizations other than Brunswick?

"Answer: Yes, sir.

"Question: Do you know how many were so acquired?

"Answer: I just gave you the figure. All of those that we have acquired, to the best of my knowledge, have been acquired by the fact that

[1744]

somebody defaulted on their payments and Brunswick had to repossess the equipment.

"Question: So what you say then is the whole 130 in 1965 were so acquired; is that your testimony?

"Answer: Every one we have as of now.

"Question: And that is true of 1966 and 1967 and 1968, is that right?

"Answer: Every one that I have heard of.

"Question: Is it also true that Brunswick did not during that period build in the United States of America any new bowling center which was not acquired from some other source?

"Answer: We built centers for customers.

"Question: Any new one which you operated yourself?

"Answer: No, sir.

"Question: That is true, is it not, for that three-year span, 1965, 1966, and 1967?

"Answer: Yes, sir.

"Question: It is also true for 1968?

"Answer: So far, yes, sir.

"Question: Do you know whether or not during this period we have been discussing from 1965 on, Brunswick sold to other persons outside the organ-

[1745]

ization any of its bowling centers?

"Answer: Yes, sir.

"Question: Do you know how many?

"Answer: Those that we operated, about seven or eight.

"Question: Can you distribute those even or eight among those three and a half years?

"Answer: No, sir.

"Question: Do you know whether they sold any in the year 1965?

"Answer: I don't remember the exact dates when we sold any of these, but in his period we did sell some.

"Question: But you don't remember within the span of over three years as to when you sold any of them?

"Answer: The specific year? No, sir.

"Question: Do you know whether you sold any at all in the last few months?

"Answer: Yes, sir.

"Question: How many?

"Answer: I know of one in Canada, two in Canada.

"Question: How about the United States?

"Answer: I don't remember any."

[1746]

Mr. Agee: May I continue?

"Question: You don't know one way or the other as to whether you sold any in the United States in the last few months?

"Answer: No, sir.

"Question: Is it your testimony the same as to all of 1968? Do you know whether you sold any in the United States during the year 1968?

"Answer: I don't remember, no, sir."

Mr. McNeill: Your Honor, was it stated for the record the dates that those two sessions of the deposition were taken?

Mr. Agee: March of 1967 and June of 1968. I did state it for the record before.

Mr. Hoffmann: I'd like to call to the stand Mr. Richard Davis.